142
CLERK'S COPY

Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 862)

Supreme Court of the United States

OCTOBER TERM, 1946

No. 467

AYRSHIRE COLLIERIES CORPORATION, ET AL., AND CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA

FILED SEPTEMBER 6, 1946.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 467

AYRSHIRE COLLIERIES CORPORATION, ET AL., AND CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA

VOL. I

INDEX

	Original	Print
Record from D. C. U. S., Southern District of Indiana	1	1
Placita (omitted in printing)	1	
Petition—Case No. 1072	2	1
Petition—Case No. 1076	5	41
Designation of Honorable Evan A. Evans and Honorable Michael L. Igoe, Judges—Case No. 1072	7	50
Proof of Notice to Attorney General for the United States of America and to the Interstate Commerce Commission—Case No. 1072	9	50
Order assigning case for final hearing on March 25, 1946—Case No. 1072	11	51
Designation of Honorable Evan A. Evans and Honorable Michael L. Igoe, Judges—Case No. 1076	13	52
Proof of notice to Attorney General for the United States of America and to the Interstate Commerce Commission—Case No. 1076	15	53
Order assigning case for final hearing on March 25, 1946—Case No. 1076	17	54

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEB. 3, 1947.

—8884

Record from D. C. U. S., Southern District of Indiana—Continued	Original	Print
Order consolidating cases for all purposes	18	54
Answer of United States of America—Case No. 1072	20	55
Motion of Kentucky Coal Agency, Incorporated, for leave to intervene as a defendant—Case No. 1072	24	56
Order granting motion for leave to intervene—Case No. 1072	25	57
Petition of Kentucky Coal Agency, Incorporated, for leave to intervene as a defendant—Case No. 1072	26	58
Motion of Railroad Commission of Kentucky for leave to intervene as a defendant—Case No. 1072	30	60
Order granting motion for leave to intervene—Case No. 1072	32	60
Petition of Railroad Commission of Kentucky for leave to intervene as a defendant—Case No. 1072	33	61
Motion of Kentucky Coal Agency, Incorporated, for leave to intervene as a defendant—Case No. 1076	38	63
Order granting motion for leave to intervene—Case No. 1076	39	64
Petition of Kentucky Coal Agency, Incorporated, for leave to intervene as a defendant—Case No. 1076	40	65
Motion of Raliroad Commission of Kentucky for leave to intervene as a defendant—Case No. 1076	44	67
Order granting motion for leave to intervene—Case No. 1076	46	67
Petition of Railroad Commission of Kentucky for leave to intervene as a defendant—Case No. 1076	47	68
Motion of The Alton Railroad Company (Henry A. Gardner, Trustee), et al., for leave to intervene as defendants—Case No. 1072	52	70
Motion of The Alton Railroad Company (Henry A. Gardner, Trustee), et al., for leave to intervene as defendants—Case No. 1076	54	71
Order granting motions for leave to intervene	56	72
Petition of The Alton Railroad Company (Henry A. Gardner, Trustee), et al., for leave to intervene as defendants—Case No. 1072	58	73
Petition of The Alton Railroad Company (Henry A. Gardner, Trustee), et al., for leave to intervene as defendants—Case No. 1076	61	75
Answer of United States of America—Case No. 1076	65	76
Order granting Interstate Commerce Commission leave to intervene as a defendant	68	78
Intervention of Interstate Commerce Commission—Case No. 1072	69	78
Answer of Interstate Commerce Commission—Case No. 1072	70	79
Intervention of Interstate Commerce Commission—Case No. 1076	75	82

Record from D. C. U. S., Southern District of Indiana—Continued	Original	Print
Answer of Interstate Commerce Commission—Case No. 1076	76	82
Motion of Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau for leave to intervene as parties defendant—Case No. 1072	84	87
Motion of Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau for leave to intervene as parties defendant—Case No. 1076	85	87
Petition of Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau for leave to	86	88
Order granting motions for leave to intervene	87	89
intervene as defendants—Case No. 1072		
Petition of Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau for leave to intervene as defendants—Case No. 1076	91	91
Order reassigning cases for trial to April 22, 1946	95	93
Motion of Tecumseh Coal Company, et al., for leave to intervene as defendants—Case No. 1072	97	93
Motion of Tecumseh Coal Company, et al., for leave to intervene as defendants—Case No. 1076	98	94
Order granting motions for leave to intervene	99	94
Petition of Tecumseh Coal Company, et al., for leave to intervene as defendants—Case No. 1072	100	95
Petition of Tecumseh Coal Company, et al., for leave to intervene as defendants—Case No. 1076	104	97
Answer of intervening defendants, Railroad Commission of Kentucky and Kentucky Coal Agency, Incorporated—Cases No. 1072 and 1076	109	99
Motion of Belleville Fuels, Inc., and Fifth and Ninth as parties defendant—Case No. 1072	112	100
Districts Coal Traffic Bureau for leave to intervene		
Motion of Belleville Fuels, Inc, and Fifth and Ninth Districts Coal Traffic Bureau for leave to intervene as parties defendant—Case No. 1076	113	101
Order granting motion for leave to intervene	114	101
Petition of Belleville Fuels, Inc., and Fifth and Ninth Districts Coal Traffic Bureau for leave to intervene as defendants—Case No. 1072	115	102
Petition of Belleville Fuels, Inc., and Fifth and Ninth Districts Coal Traffic Bureau for leave to intervene as defendants—Case No. 1076	118	104
Designation of Honorable J. Earl Major, U. S. Circuit Judge, to sit as District Judge—Case No. 1072	121	106
Submission for final hearing before Three-Judge Court—Consolidated cases	122	107
Findings of fact and conclusions of law	124	108
Judgment	128	111
Petition for appeal	130	112

Record from D. C. U. S., Southern District of Indiana—Continued	Original	Print
Assignment of errors	133	113
Order allowing appeal	150	119
Appeal bond—Case No. 1072 (omitted in printing)	152	
Appeal bond—Case No. 1076 (omitted in printing)	157	
Citation on appeal (omitted in printing)	162	
Notice to Attorney General of the State of Indiana	166	120
Notice of appeal	169	121
Proof of service of citation on appeal	175	122
Praecipe for transcript of record filed by appellants	202	124
Proof of service of notice of filing of praecipe for transcript of record	209	127
Praecipe designating additional portions of the record to be included in record on appeal filed by appellees, United States of America and Interstate Commerce Commission	233	130
Clerk's certificate (omitted in printing)	235	

PETITIONERS' EXHIBITS

No. 1—Proceedings before Interstate Commerce Commission in Docket Nos. 28881 and 5139	236	131
Protest of Coal Trade Association of Indiana	240	131
Order for hearing, etc., July 30, 1942, Docket No. 5139	257	141
Petition on behalf of Illinois Railroads	260	145
Order instituting investigation, Docket No. 28881	283	159
Petition of Railroad Commission of Kentucky for leave to intervene	285	161
Petition of Kentucky Coal Agency, Inc., for leave to intervene	288	163
Report and order, July 9, 1945	291	164
Orders extending effective date of order of July 9, 1945	337	223
No. 4—Transcript of hearing before Interstate Commerce Commission in Docket Nos. 28881 and 5139, March 18-25, 1943	1	226
Caption and appearances	1	226
Colloquy	8	228
Testimony of W. J. Roberfson	18	232
B. M. Hamilton	60	256
L. G. Reymiller (omitted in printing)	280	
C. J. Nelson	344	343
Exhibit No. 1—Map showing coal-producing groups in Illinois, Indiana and Western Kentucky	649a	486
Exhibit No. 2—Map showing rates from Southern Illinois Group in cents per ton of 2,000 pounds (subject to Ex parte 148 increase)	649b	486

Record from D. C. U. S., Southern District of Indiana—Continued

PETITIONER'S EXHIBITS—Continued

	Original	Print
No. 5—Transcript of hearing before Interstate Commerce Commission in Docket Nos. 28881 and 5139, June 15-24, 1943	674	487
Testimony of C. J. Nelson (resumed)	674	487
W. H. Kuhls	756	515
H. H. Washer	1058	690
J. E. Flansburg	1074	701
Carl W. Dilli	1110	720
O. E. Pearson	1130	732
S. F. Lynch	1156	749
W. J. Whalen	1200	778
C. H. Fischer	1238	802
Chas. H. Longman	1247	808
No. 6—Transcript of hearing before Interstate Commerce Commission in Docket Nos. 28881 and 5139, September 23-30, and October 1-12, 1943.	1308	824
Testimony of—		
Carl W. Dilli (recalled)	1308	825

VOL. II

Harry A. Rozene		1381	866
Harold V. Scott		1690	1059
H. F. Hoffman	(omitted in printing)	2058	
A. S. Boden	(omitted in printing)	2098	
H. F. Cholet		2128	1275
A. J. Christiansen		2174	1292
D. W. Forsberg	(omitted in printing)	2287	
J. H. Ederstrom	(omitted in printing)	2300	
B. F. Hampshire	(omitted in printing)	2312	
W. F. Neff	(omitted in printing)	2334	
D. A. Kirane	(omitted in printing)	2346	
Morton Abelson	(omitted in printing)	2361	
A. J. Christiansen (recalled)		2373	1360
Harold V. Scott (recalled)		2380	1363
A. J. Christiansen (recalled)		2398	1374
Harold V. Scott (recalled)		2464	1416
A. J. Christiansen (recalled)		2469	1418
R. H. May		2534	1454
Harry G. Nevins	(omitted in printing)	2586	
A. J. Christiansen (recalled) (omitted in printing)		2624	
Harry A. Rozene (recalled)		2631	1484
W. Y. Wildman		2756	1549
A. J. Christiansen (recalled)		2763	1554
B. M. Hamilton (recalled)		2765	1555
Walter H. Kuhls (recalled)		2804	1581
C. J. Nelson (recalled)		2830	1598

Record from D. C. U. S., Southern District of Indiana—Continued

Petitioner's Exhibits—Continued

	Original	Print
No. 8—Schedules filed with Interstate Commerce Commission	2860	1614
Supplement No. 51 to The Pennsylvania Railroad Company Local, Joint and Proportional Freight Tariff No. 60-F, I. C. C. No. 2387, said schedule having been filed July 2, 1942	2860	1614
Supplement No. 34 to The Baltimore and Ohio Railroad Company Local, Joint and Proportional Freight Tariff No. C. T. H. 423-C, I. C. C. No. WL-10705, said schedule having been filed July 2, 1942	2865	1619
Supplement No. 54 to The New York Central Railroad Company Local, Joint and Proportional Freight Tariff No. 385, I. C. C. No. 164, said schedule having been filed July 1, 1942	2869	1623
Supplement No. 56 to said I. C. C. No. 164 having been filed July 9, 1942	2873	1627
Supplement No. 10 to Illinois Central Railroad Company Local, Joint and Proportional Coal Tariff No. 3100-H, I. C. C. No. E-1802, said schedule having been filed July 1, 1942	2881	1635
Supplement No. 12 to said I. C. C. No. E-1802 having been filed July 25, 1942	2889	1643
Supplement No. 27 to Chicago, Milwaukee, St. Paul and Pacific Railroad Company Local, Joint and Proportional Freight Tariff G. F. D. No. 15200-D, I. C. C. No. B-7246, said schedule having been filed July 4, 1942	2891	1645
Supplement No. 28 to said I. C. C. No. B-7246 having been filed July 10, 1942	2894	1648
Supplement No. 20 to Chicago, Indianapolis and Louisville Railway Company Local, Joint and Proportional Freight Tariff No. 408-D, I. C. C. No. 4724, said schedule having been filed June 27, 1942	2898	1652
Supplement No. 18 to Chicago & Eastern Illinois Railroad Company Local, Joint and Proportional Freight Tariff No. 100-C, I. C. C. No. 2, said schedule having been filed June 30, 1942	2900	1654
Supplement No. 33 to Southern Railway System Joint Coal Tariff No. 809-G, I. C. C. No. C-2230, said schedule having been filed July 2, 1942	2904	1658
No. 9—Order extending effective date of orders of July 9, 1945, and November 13, 1945, by Commission	2908	1663
No. 10—Same	2909	1664
No. 11—Same	2910	1665

	Original	Print
Statement of points to be relied upon and designation of parts of record to be printed	2911	1666
Designation by appellees of additional portions of record to be printed	2924	1674
Order noting probable jurisdiction	2926a	1675
Stipulation as to printed record	2927	1675

[fol. 1] [Placita omitted]

[fol. 2-1]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA

No. 1072 Civil

AYRSHIRE COLLIERIES CORPORATION, a Corporation, et al.,

Petitioners,

vs.

THE UNITED STATES OF AMERICA, Defendant

PETITION—Filed December 21, 1945

The Petitioners hereinafter named, by their attorneys, on behalf of themselves and such other parties as may have an interest herein and who may, by proper proceedings, become parties to this proceeding, bring this action to enjoin, set aside, annul or suspend, in whole or in part, an order of the Interstate Commerce Commission, dated July 9, 1945, and subsequently amended, entered in a proceeding before the Interstate Commerce Commission, entitled "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois," and respectfully show unto the Court:

I

Each of the Petitioners is now, and at all times hereinafter mentioned has been, a corporation duly organized and existing under the laws of one or more of the States of the United States, or an individual, and each of them [fol. 2-2] now is and at all times hereinafter mentioned has been engaged in the operation of a coal mine or mines in the State of Indiana, except the Petitioner, Coal Trade Association of Indiana, which is a voluntary association whose members are composed of the other Petitioners hereinafter named, together with certain other persons and corporations operating coal mines in Indiana.

The addresses of your Petitioners' main offices or principal places of business and if a corporation, the name

of the State under the laws of which each Petitioner is organized, are as follows:

Ayrshire Collieries Corporation, 105 S. Meridian St., Room 430, Indianapolis, Indiana. Incorporated under the Laws of Delaware.

Big Bend Collieries, Inc., Box 293, Brazil, Indiana. Incorporated under the Laws of Indiana.

Birch Creek Coal Company, Inc., Brazil, Indiana. Incorporated under the Laws of Indiana.

Blackfoot Coal & Land Corporation, Citizens Bank Bldg., Evansville, Indiana. Incorporated under the Laws of Indiana.

Blackhawk Coal Corporation, 111 North 7th Street, Terre Haute, Indiana. Incorporated under the Laws of Indiana.

Walter Bledsoe & Company, 700 Merchants Bank Bldg., Terre Haute, Indiana. Incorporated under the Laws of Indiana.

Boonville Coal Sales Corporation, Boonville, Indiana. Incorporated under the Laws of Indiana.

Central Indiana Coal Company, Inc., 1015 Merchants Bank Bldg., Indianapolis, Indiana. Incorporated under the Laws of Indiana.

[fol. 2-3] The Enos Coal Mining Company, 1405 Merchants Bank Bldg., Indianapolis, Indiana. Incorporated under the Laws of Ohio.

Glendora Coal Company, 19 South 6th Street, Terre Haute, Indiana. Incorporated under the Laws of Indiana.

Hickory Grove Coal Mining Corporation, Merchants National Bank Bldg., Terre Haute, Indiana. Incorporated under the Laws of New York.

Ingle Coal Corporation, Elberfeld, Indiana. Incorporated under the Laws of Indiana.

Knox Consolidated Coal Corporation, 1456 Consolidated Bldg., Indianapolis, Indiana. Incorporated under the Laws of Delaware.

Linton Summit Coal Company, Inc., 19 S. 6th Street, Terre Haute, Indiana. Incorporated under the Laws of Indiana.

Little Betty Mining Corporation, 301 Merchants Bank Bldg., Terre Haute, Ind. Incorporated under the Laws of Indiana.

Mariah Hill Super Block Coal Company, Huntingburg, Indiana. Incorporated under the Laws of Delaware.

The Maumee Collieries Company, Terre Haute, Indiana. Incorporated under the Laws of Ohio.

Princeton Mining Company, 111 North 7th St., Terre Haute, Indiana. Incorporated under the Laws of Indiana.

Pyramid Coal Corporation, Terre Haute, Indiana. Incorporated under the Laws of Illinois.

Sherwood-Templeton Coal Company, 1016 Merchants Bank Bldg., Indianapolis, Ind. Incorporated under the Laws of Indiana.

Snow Hill Coal Corporation, 1318 Fletcher Trust Bldg., Indianapolis, Indiana. Incorporated under the Laws of Indiana.

[fol. 2-4] Standard Coal Company, Box 200, Vincennes, Indiana. Incorporated under the Laws of Indiana.

Paul E. Horton, doing business as Hill Coal Company, Newburgh, Indiana. A citizen and resident of the State of Indiana.

H. A. Siepman, doing business as H. A. Siepman Coal Company, Coalmont, Indiana. A citizen and resident of the State of Indiana.

Coal Trade Association of Indiana, Terre Haute, Indiana. A voluntary association.

II

This proceeding is brought for the purpose of having enjoined, set aside, amended or suspended, in whole or in part, an order of the Interstate Commerce Commission, hereinafter called the "Commission," entered July 9, 1945, in a proceeding entitled "Investigation and Suspension Docket No. 5139, *Coal to Beloit, Wis. and Northern Illinois*," which order by subsequent amendment is to become effective February 8, 1946. Said order recites, that the Commission by order dated July 30, 1942, upon complaint, entered upon a hearing concerning the lawfulness of the rates stated in the schedules described in said order and suspended such schedules; that a full investigation of the matters involved has been made, and the Commission has made and filed a report containing its findings of fact and conclusions thereon, and has found that the schedules suspended in said proceeding have not been justified because certain of the proposed rates on coal from Indiana and Western Kentucky rate groups to points in Northern Illinois and to Beloit, Wisconsin, would be unreasonable, unjustly dis-

[fol. 2-5] criminatory, or unduly prejudicial or preferential, and that certain of the present rates on coal from Indiana and Western Kentucky rate groups to points in northern Illinois and from Indiana to Beloit, Wis., are unjustly discriminatory and unduly prejudicial and preferential in and to the extent shown in the report.

The order requires the respondent carriers to cancel the proposed schedules upon not less than one day's notice in the manner prescribed in Section 6 of the Interstate Commerce Act, but without prejudice to the establishment of rates on the bases approved by the Commission in said proceeding. It further orders the respondents, according as they participate in the transportation, by tariffs filed on not less than thirty (30) days' notice, to be effective on or before November 16, 1945 (by subsequent amendment, on or before February 8, 1946), "(1) to cease and desist from practicing the unjust discrimination under section 2 of the Interstate Commerce Act and the undue prejudice and preference under section 3 (1) of said Act found in said report to exist, and (2) to publish, maintain and apply rates and charges which will avoid and remove the said unjust discrimination and undue prejudice and preference." Said order is to continue in force until the further order of the Commission.

The said proceeding was heard upon a record embracing a proceeding entitled "*Bituminous Coal Rates Within Illinois*, Interstate Commerce Commission Docket No. 28881," which was a proceeding initiated by the Commission upon its own motion, but in response to a petition filed under Section 13 of the Interstate Commerce Act by certain railroads operating in the State of Illinois, for the purpose of determining whether or not rates and charges for the intrastate transportation of coal in carloads from [fol. 2-6] Illinois mines to the same destinations in northern Illinois as those involved in the suspended schedules from Indiana caused and resulted in undue, unreasonable and unjust discrimination against interstate commerce, and undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce on the one hand and interstate commerce on the other. The report of the Commission in I. & S. Docket No. 5139 embraces its report in said Docket No. 28881.

The proceeding in I. & S. Docket No. 5139 was instituted by the filing of a complaint or protest by the Coal Trade

Association of Indiana, a voluntary association composed of the Petitioners herein, and others, who operate coal mines in the State of Indiana and whose coal is shipped by rail from such mines. Said complaint or protest prayed the suspension of the schedules of new rates filed by the railroads to become effective August 2, 1942, wherein the various railroads serving coal mines in the State of Indiana, viz., The Baltimore and Ohio Railroad Company, Chicago and Eastern Illinois Railroad Company, Chicago, Indianapolis & Louisville Railway Company (L. F. DeRamus and Holman D. Pettibone, Trustees), Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees), Illinois Central Railroad Company, The New York Central Railroad Company, and Southern Railway Company, filed tariffs or schedules publishing new rates from the mines in Indiana to some seventy destinations in northern Illinois in the vicinity of Rockford, Illinois, and including Rockford, Illinois, in which said schedules the new rates were from 5 cents to 17 cents per ton higher than the rates then in effect. Said schedules also contained [fol. 2-7] new rates from certain mines in Indiana to Beloit, Wisconsin, which were 12 cents to 17 cents per ton higher than the current rates to Beloit, Wisconsin; except that the schedules filed by the Southern Railway Company contained no new rates from mines served by it in Indiana to Beloit, Wisconsin; the schedules filed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company contained no new rates for the transportation of coal from mines served by it in Indiana to Beloit, Wisconsin, moving via the single line routes of said Chicago, Milwaukee, St. Paul and Pacific Railroad; and the schedules of rates from the mines on the Algers, Winslow & Western Railroad Company contained no new rates from such mines served by it to Beloit, Wisconsin.

Upon the filing of said schedules and before the same became effective, the Coal Trade Association of Indiana, on behalf of its members, Petitioners herein, filed the said complaint or protest with the Commission praying that said schedules be suspended and their effective date postponed, and that the Commission institute an investigation of the propriety and legality of the new rates contained in said schedules. Upon that protest the Commission entered its order of July 30, 1942, entering upon a hearing concern-

ing the lawfulness of said rates and suspending the operation of said schedules and postponing the effective date for the period of time permitted by the Interstate Commerce Act, and the effective date of said schedules was voluntarily postponed by respondents until the disposition of the proceeding.

The principal offices or the main business offices of the other Petitioners herein and of the Coal Trade Association of Indiana, protestant before the Commission in I. & S. Docket No. 5139, are in the State of Indiana, in the Southern District thereof.

[fol. 2-8] The venue of this suit is fixed by 28 U. S. C. A. 43 (38 Stat. 219).

Jurisdiction of this Court is invoked under the provisions of the Judicial Code, 28 U. S. C. S. 41 (8) and (28), 43, 44, 45, 45a, 46, 47, 47a and 48 (38 Stat. 219, *et seq.*), and other applicable Federal statutes.

III

Petitioners attach to this petition as Exhibits, and pray that they be considered as a part hereof, copies of the following:

Exhibit A: Protest and Request for Suspension of Proposed Rates on Bituminous Coal from Mines in Indiana to Beloit, Wisconsin, and Destinations in Northern Illinois, filed by the Coal Trade Association of Indiana on July 16, 1942.

Exhibit B: Order of the Commission, dated July 30, 1942, ordering a hearing concerning the lawfulness of the rates contained in the schedules referred to therein and suspending the operation of said schedules.

Exhibit C: Order of the Commission, dated September 9, 1942, instituting an investigation into the lawfulness of intrastate rates within Illinois under Docket No. 28881.

Exhibit D: Report of the Commission in I. & S. Docket No. 5139, Coal to Beloit, Wisconsin, and Northern Illinois, dated July 9, 1945, which report is published in 263, I. C. C. 179.

Exhibit E: Order of the Commission in I. & S. Docket No. 3139, Coal to Beloit, Wis., and Northern Illinois, dated July 9, 1945.

[fol. 2-9] Exhibit F: Petition of Coal Trade Association of Indiana, on behalf of its members, for Reopening, Rehearing, Reargument and Reconsideration, and Postponement of Effective Date of the Report and Order of the Commission, dated July 9, 1945, filed September 27, 1945.

Exhibit G: Order of the Commission dated October 5, 1945, postponing the effective date of the Order of July 9, 1945, to December 20, 1945.

Exhibit H: Order of the Commission, dated November 13, 1945, denying the petitions of the Coal Trade Association of Indiana and others for Reopening, Rehearing, Reargument and Reconsideration of the Report and Order of the Commission dated July 9, 1945, and postponing the effective date of the Order of July 9, 1945, to January 21, 1946.

Exhibit I: Order of the Commission in Docket No. 28881, dated November 13, 1945, prescribing a basis of rates within Illinois.

Exhibit J: Order of the Commission, dated December 6, 1945, postponing the effective date of the Orders in I & S. Docket No. 5139, dated July 9, 1945, and Docket No. 28881, dated December 13, 1945, to February 8, 1946.

The record before the Commission in the proceedings in I. & S. Docket No. 5139 and Docket No. 28881, which were heard together, is so voluminous that it is impracticable to attach it as an exhibit to this petition, but a certified copy of the complete transcript of record, testimony and exhibits in both of said proceedings is lodged with the Clerk herewith and is made a part hereof as if fully set forth herein.

[fol. 2-10] IV

The new schedules of rates, the suspension and investigation of which was ordered by the Commission in I. & S. Docket No. 5139, were filed by the railroads in alleged compliance with an order of the Commission in the case of *Fairbanks-Morse & Co.* v. *Alton & Southern R. Co.*, 251 I. C. C. 181. In that case the Commission on March 3, 1942, found that the rates on coal from mines in Illinois,

Indiana and Western Kentucky to Beloit, Wisconsin, were not unreasonable, but that such rates unduly preferred Rockford, Illinois, and unduly prejudiced Beloit to the extent that the rates to Beloit exceeded the rates to Rockford by more than 15 cents per ton, and ordered such prejudice and preference be removed. At the time of the entry of said order the rates from Illinois and western Kentucky mines to Beloit were 30 cents per ton more than those to Rockford, and the rates from the Indiana mines varied via the routes of different carriers from 13 cents, 18 cents and 30 cents more to Beloit than to Rockford. The new schedules filed by the carriers in alleged compliance with the said order increased the rates to Rockford 15 cents per ton, and to some seventy other destinations intermediate to Rockford in Illinois by amounts varying from 2 cents to 17 cents per ton, varying in amounts as between origins and as between carriers; and certain carriers serving mines in Indiana included in their schedules new rates to Beloit 15 cents per ton more than the new rates to Rockford. The Southern Railway Company published new rates to Rockford from origins on its line in Indiana but did not publish any new rate to Beloit, which resulted in rates to Beloit via that carrier 3 cents per ton more than the new rates to Rockford. The Chicago, Milwaukee, St. Paul & Pacific Railroad Company [fol. 2-11] did not publish new rates to Beloit via its own line, but did publish new rates via joint line hauls 15 cents per ton over the new rates it published for joint line hauls to Rockford.

The new rates to Beloit, to Rockford and other Illinois destinations from Indiana and western Kentucky were suspended by the Commission upon complaint of the Coal Trade Association of Indiana, and the new intrastate rates to Rockford and other Illinois destinations were suspended by the Illinois Commerce Commission.

At or about the time the carriers filed their schedules of new rates, as above set forth, the principal carriers operating in Illinois filed their petition with the Commission alleging that the intrastate rates on coal within Illinois unduly preferred intrastate commerce and unduly prejudiced interstate commerce in coal. In response to that petition the Commission in Docket No. 28881 entered upon an investigation under Section 13 of the Interstate Com-

merce Act (49 U. S. C. A. 13) concerning the lawfulness of such intrastate rates on coal.

The two proceedings before the Commission and the suspension proceedings before the Illinois Commerce Commission were heard on a common record before an Examiner for the Commission and representatives of the Illinois Commerce Commission. Various parties entered appearances and participated in the proceedings including the Price Administrator and groups of coal mine operators through their respective associations. After the close of the hearings the parties filed briefs and arguments with the Commission.

The Examiner of the Commission filed a proposed report in the two cases before the Commission, to which various parties filed exceptions and replies to exceptions, and the Commission heard arguments of the interested [fol. 2-12] parties in both cases at the same time. Thereafter, on July 9, 1945, the Commission issued and filed its report which covered the two cases before it, and entered its order in I. & S. Docket No. 5139. On November 13, 1945, the Commission entered an order denying the petitions of the Coal Trade Association of Indiana, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company and Rockford Chamber of Commerce, *et al.*, for rehearing, reargument and reconsideration in said I. & S. Docket No. 5139, and also entered an order in Docket No. 28881 requiring the maintenance of rates within Illinois for the transportation of coal not less than certain rates approved in said report. The Illinois Commerce Commission has made no final decision or order with respect to the intrastate rates.

V

The report and order of the Commission are illegal, arbitrary, unreasonable, beyond the power of the Commission, and therefore void, because they purport to determine the lawfulness of the present rates from Indiana to destinations in Illinois, and to require the respondents to publish and maintain rates in the future on a certain basis for the purpose of curing the alleged unlawfulness of the present rates, an issue that was not before the Commission in this proceeding.

The power and jurisdiction of the Commission to investigate new rates and suspend such rates is contained

in Section 15 (7) of the Interstate Commerce Act. (49 U. S. C. A. 15 (7).) That section provides that "Whenever there shall be filed with the Commission any schedules stating a *new* individual or joint rate * * * the Commission shall have, and it is hereby given, authority, either [fol. 2-13] upon complaint or upon its own initiative without complaint * * * to enter upon a hearing concerning the lawfulness of *such* rate * * * and after full hearing the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective." (Italics supplied.) The order of the Commission, dated July 30, 1942, entered upon the complaint or protest of the Coal Trade Association of Indiana, recites that "there have been filed with the Commission tariffs containing schedules stating new individual and joint rates and charges, * * * to become effective on the 2nd of August, 1942, and later," and it ordered that the Commission, "upon complaint, without formal pleading, enter upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in said schedules, contained in said tariffs," and "the rates, charges, regulations and practices stated in all the schedules contained in each of the * * * tariffs and supplements named in this order," and after ordering that the effective date of said schedules be postponed, the order proceeded: "*And it is further ordered*, That this proceeding be, and the same is hereby, assigned for hearing September 11, 1942, * * *."

The Commission was without jurisdiction or authority in this proceeding to enter any order or to make any findings or conclusions with respect to the present rates, as the sole issue in this proceeding was the lawfulness of the *new* rates contained in the schedules enumerated in the Commission's order of July 30, 1942. Further, the only rates involved in the notice of hearing contained in such order were the new rates; there was no hearing or notice of hearing or order for a hearing with respect to the lawfulness of the present rates.

[fol. 2-14] The action of the Commission in making findings of fact and conclusions and entering an order with respect to the present rates which were not before it, and were not at issue in the proceedings, was arbitrary and beyond its power and authority and therefore void.

VI

The order of the Commission, in so far as it would require respondents to remove the alleged discrimination and undue prejudice and preference in the present or proposed rates from the Indiana groups to destinations in northern Illinois, is illegal, arbitrary, unreasonable and beyond the power of the Commission, and therefore void, because there was no evidence in the record with respect to such rates, other than the fact of the measure of such rates and the distances over which such rates applied to various destinations.

1. The evidence shows that since 1934 the Milwaukee Railroad has maintained rates from mines served by it in the Brazil-Clinton and Linton-Sullivan groups to Rockford, Freeport and certain other destinations on its line in Illinois which, while less than the rates charged by other carriers in said groups to Rockford, Freeport and some of the destinations on the line of the Milwaukee, were for different length hauls; that the lesser rates applied for the single line hauls via the Milwaukee while the higher rates applied on joint line hauls via other carriers, and some via other carriers and the Milwaukee. The proposed rates continued that relationship.

2. There was no evidence that any person shipping from a point on the Milwaukee in either group served by it in Indiana to any destination on its line in Illinois for trans- [fol. 2-15] portation via its single line was charged, or would be charged, any greater or less rate than the published charge of the Milwaukee for such service or that any rebate, drawback or other form of credit was given, or would be given to any shipper on such route.

3. There was no evidence that the service via the direct line of the Milwaukee was like, or would be like, the contemporaneous service from mines on the lines of other carriers or from mines on the Milwaukee via other routes, or that the service of the Milwaukee via its direct line was or would be performed under substantially similar conditions as the joint line transportation from other mines in said groups.

4. There was no evidence that any particular person, company, firm, corporation, association, locality, district

or any particular description of traffic was or would be accorded any undue or unreasonable preference or advantage by reason of the present or proposed single line rates of the Milwaukee from the Brazil-Clinton and Linton-Sullivan groups in Indiana to Rockford, Freeport and other destinations on its line in Illinois, or that any particular person, company, firm, corporation, association, locality, district, territory or particular description of traffic was or would be subjected to any undue or unreasonable prejudice or disadvantage by reason thereof.

5. There was no evidence that any mine in Indiana would have shipped or would in the future be able to ship more coal to Rockford, Freeport or any other destination on the line of the Milwaukee in Illinois to which said present or proposed single line rates from Brazil-Clinton and Linton-Sullivan groups apply or would apply if the rates of the Milwaukee were the same as or higher than the rates [fol. 2-16] of the other carriers serving mines in said groups.

6. There was no evidence that any person, firm, company, corporation or locality in Illinois at which coal is used and consumed, was or would be prejudiced or preferred by reason of the present or proposed single line rates of the Milwaukee from the Brazil-Clinton and Linton-Sullivan groups being on a lower basis than the present or proposed joint line rates from mines in those groups.

7. There was no evidence that the present or proposed single line rates of the Milwaukee from mines on its lines in Brazil-Clinton and Linton-Sullivan, Indiana, to Rockford, Freeport and other points on its line in Illinois unduly preferred or would unduly prefer the shippers on that line or unduly prejudice or would unduly prejudice the shippers from any of the mines in the other two groups in Indiana or any shippers of coal from groups in Illinois.

8. No party to this proceeding claimed or asserted in any evidence or in any brief or argument filed with or made to the Commission in I. & S. Docket No. 5139 that the present or proposed single line rates of the Milwaukee unduly preferred or would unduly prefer shippers of coal served by the Milwaukee in the Brazil-Clinton and Linton-Sullivan groups in the shipment of coal from such origins to Rockford, Freeport and other destinations on

the line of the Milwaukee in Illinois, and no one claimed to be injured or hurt thereby, or that any one would be injured or hurt by the present or proposed single line rate of the Milwaukee.

9. All of the above statements with respect to the present and proposed single line rates of the Milwaukee from mines served by it in the Brazil-Clinton and Linton-Sulli- [fol. 2-17] van groups in Indiana to Rockford, Freeport and intermediate destinations on its line in Illinois, are true with respect to the present and proposed single line rates of the Illinois Central published from origins served by it in the Linton-Sullivan group to Rockford, Freeport and other destinations on the line of the Illinois Central in Illinois, which are lower than the present and proposed rates from other mines in the said Linton-Sullivan group to such destinations.

10. There was no evidence in this record that the Milwaukee in any way controlled the present or proposed rates published by other carriers serving mines in the Brazil-Clinton and Linton-Sullivan groups in Indiana to Rockford, Freeport or other destinations on the line of the Milwaukee in Illinois, to which the Milwaukee published lower rates via its single line than the rates from origins on such other carriers, nor was there any evidence that the Illinois Central had any control over the rates from any mines served by other carriers in the Linton-Sullivan group to Rockford, Freeport and other destinations in Illinois on the line of the Illinois Central, to which the lower present and proposed single line rates of the Illinois Central apply.

11. There was no evidence on the question of what is or would be a reasonable minimum rate for the service of transporting coal via the single line of the Milwaukee from the Brazil-Clinton and Linton-Sullivan groups in Indiana to Rockford, Freeport and other destinations on its line in Illinois, nor what is or would be a reasonable minimum rate for the service of the Illinois Central for transporting coal from mines on its line in Linton-Sullivan to Rockford, Freeport and other destinations on its line in Illinois.

[fol. 2-18]

VII

The report and order of the Commission are illegal, arbitrary, unreasonable and beyond the power of the Commission, and therefore void, because they purport to deter-

mine the lawfulness of the present rates from mines in Indiana to Beloit, Wisconsin, and to require the publication and maintenance of rates from mines in Indiana to Beloit on a new basis for the purpose of curing unjust discrimination under Section 2 of the Interstate Commerce Act and undue prejudice and preference under Section 3 (1) of said Act, found in said report to exist, an issue which was not before the Commission in this proceeding.

1. The Milwaukee did not file any new schedule of rates via its single line from origins on that line in the Brazil-Clinton and Linton-Sullivan groups to Beloit. The Southern Railway did not file any schedule of new rates from mines on its line in the Princeton-Ayrshire and Booyville groups to Beloit; nor was there filed any schedule of new rates from mines on the lines of the Algers, Winslow & Western Railway in the Princeton-Ayrshire group to Beloit.

2. The finding and conclusion are that there is unjust discrimination and undue preference and prejudice in the present rates from Indiana to Beloit to the extent that such rates differ from the approved rates in Appendices A and D of the report. That schedule of approved rates sets forth relationships as between the groups in Indiana and as between the Indiana groups and the groups in Illinois which differ materially from the present relationship in those rates. The order purports to require the respondents to change the existing relationship of the present rates.

[fol. 2-19] 3. The power and jurisdiction of the Commission to investigate new rates and to suspend such rates, as provided in Section 15 (7) of the Interstate Commerce Act, (49 U. S. C. A. 15 (7)), limits the Commission to action regarding the new rates, and it can not act with respect to the present rates.

4. The present rates of the Milwaukee via its single line haul to Beloit and the rates of the Southern Railway from mines on its line in Indiana and the rates from mines on the line of the Algers, Winslow & Western Railway to Beloit, were not included in the order of July 30, 1942, ordering the investigation in I. & S. Docket No. 5139, and no hearing was entered upon regarding the lawfulness of those present rates to Beloit. The Com-

mission was without jurisdiction or authority in this proceeding to enter any order or to make any findings or conclusions with respect to the present rates of the Milwaukee, the Southern Railway or the Algers, Winslow & Western Railway, or other respondents to Beloit as the sole issue in this proceeding was the lawfulness of the new rates contained in the schedules enumerated in the Commission's order of July 30, 1942. There was no order for, or notice of hearing in this proceeding with respect to the lawfulness of the present rates, and there was no hearing regarding the lawfulness of the present rates.

5. No action taken by the Milwaukee or the Southern Railway or by the Algers, Winslow & Western Railway respecting rates from mines on their lines caused or tended to cause any change in the relation of the rates to Beloit. Any disruption of the present adjustment at Beloit was caused by the action of other carriers in publishing rates to Beloit higher than their present rates. It is beyond the power of the Commission in this pro- [fol. 2-20] ceeding to require the Milwaukee, the Southern Railway or the Algers, Winslow & Western Railway to take any action to correct any unlawfulness in the rates which is caused by the action of other carriers.

6. In its report the Commission states (263 I.C.C. 179, 202): "To Beloit, the relative situation as a whole differs from that to northern Illinois * * * in that the rates to that point from Illinois groups, from Brazil and Linton mines on the Milwaukee, from Princeton mines on the Southern and the Algers, Winslow & Western, and from Boonville are not here proposed to be changed and therefore are not specifically in issue in this proceeding." The action of the Commission in making findings of fact and conclusions and entering an order with respect to the rates of the three carriers above named to Beloit or with respect to the present rates of all carriers from Indiana to Beloit, which rates were not before it and not in issue in the proceeding, was arbitrary and beyond the power and authority of the Commission and therefore void.

VIII

The order of the Commission in so far as it would require respondents to remove the alleged discrimination under Section 2 of the Interstate Commerce Act, and the

alleged undue prejudice and preference under Section 3(1), in the single line rates from mines served by the Milwaukee in the Brazil-Clinton and Linton-Sullivan groups to Beloit, and the rates of the Southern Railway from mines served by it in the Princeton-Ayrshire and Boonville groups and the rates from the mines served by the Algers, Winslow & Western Railway in the Princeton-Ayrshire group to Beloit, is illegal, arbitrary, unreasonable and beyond the power of [fol. 2-21] the Commission, and therefore void, because there is no evidence in the record with respect to such rates, other than the fact of the rates from all groups or origin groups to Beloit, the proposed new rates of some of the respondents from origins in Indiana, and the distances of the hauls over which such rates applied from the various origin groups to Beloit.

1. The evidence shows that for many years the rates to Beloit from all the mines in the Brazil-Clinton group were the same; that the rates from all mines in the Linton-Sullivan group were the same; that the rates from all mines in the Princeton-Ayrshire group were the same; and the rates from all mines in the Boonville group were the same; that those rates were respectively 30, 20, 13 and 10 cents under the rates from southern Illinois to Beloit, and that such relationship had been approved by the Commission in *Illinois Coal Traffic Bureau* v. *Ahnapee & Western Railway Co.*, 204 I.C.C. 225.

2. There is no evidence in the record that any person shipping coal from origin points on the Milwaukee in the Brazil-Clinton or Linton-Sullivan groups for transportation to Beloit via the single line of the Milwaukee was or would be charged any greater or less rate than that published by the Milwaukee for such service, nor is there any evidence that any rebate, drawback or other form of credit was given or would be given to any shipper via such route.

3. There is no evidence that the continued maintenance of the present rate of the Milwaukee via its single line route to Beloit would result in collecting or receiving from any person or persons a greater or less compensation for the service rendered via the Milwaukee over its single line route, or to be rendered than it will charge [fol. 2-22] or has charged, demanded or collected or received from any other person for rendering to him or them

a like and contemporaneous service in the transportation of coal from origins in the Brazil-Clinton or Linton-Sullivan districts under substantially similar circumstances and conditions.

4. There is no evidence in the record that the service of transporting coal from origins on the Milwaukee Railroad from the Brazil-Clinton and Linton-Sullivan districts to Beloit via its single line route is or would be like the contemporaneous service from mines on the lines of other carriers serving mines in said groups, or from origins on the Milwaukee in such groups via joint line routes; nor is there any evidence that the service of the Milwaukee via its single line route is or will be performed under substantially similar conditions as the joint line service now performed or to be performed by other carriers serving mines in said groups, or joint line service from mines served by the Milwaukee in such groups.

5. There is no evidence in the record that any particular person, company, firm, corporation, association, locality, district or any particular description of traffic is being or will be accorded any undue or unreasonable preference or advantage by reason of the maintenance of the single line rates of the Milwaukee from origins on its line in the Brazil-Clinton and Linton-Sullivan groups to Beloit; nor is there any evidence that any particular person, company, firm, corporation, association, locality, district, territory or particular description of traffic is being or will be subjected to any undue or unreasonable prejudice or disadvantage by reason thereof.

6. There is no evidence that any mine in the Brazil-Clinton or Linton-Sullivan groups would expect to ship [fol. 2-23] any more coal to Beloit if the rates of the Milwaukee for its single line service from mines in Brazil-Clinton and Linton-Sullivan to Beloit were made the same as the rates from other mines in Brazil-Clinton and Linton-Sullivan to Beloit in the new schedules under suspension in this proceeding, so long as the rates from the Illinois origin groups remain as they are.

7. There is no evidence that any person, firm, company, corporation or locality in Beloit is now being or will be unduly or unreasonably prejudiced or preferred

by reason of the single line rates of the Milwaukee from Brazil-Clinton and Linton-Sullivan to Beloit over its single line haul, or by reason of the present rates from any Indiana group to Beloit.

8. There is no evidence that the present rates of the Southern Railway from the Princeton-Ayrshire and Boonville groups, or the rates from the mines on the Algers, Winslow & Western Railway to Beloit do or will subject any person, firm, company or corporation to any undue preference or disadvantage or that such rates do or will result in any undue prejudice to any shipper of coal on the lines of said railroads in Indiana.

9. There is no evidence in the record that the Milwaukee or the Southern Railway or the Algers, Winslow & Western Railway in any way control the rates published by other carriers serving mines in Indiana to Beloit, or that the Milwaukee in any way controls the rates published by the Southern Railway. There is no finding that the Milwaukee exercises any control over or has any control over the rates published by other carriers serving mines in Indiana, nor is there any such finding with respect to either the Southern Railway or the Algers, Winslow & Western Railway.

10. There is no evidence in the record and no finding of [fol. 2-24] fact on the question of what is or would be a reasonable minimum rate for the service of transporting coal via the single line of the Milwaukee from origins in the Brazil-Clinton and Linton-Sullivan groups to Beloit, nor is there any such evidence with respect to what is or would be a reasonable minimum rate for the service of transporting coal from the Princeton-Ayrshire and Boonville groups to Beloit, or from mines served by the A. W. & W. Railway in the Princeton-Ayrshire group to Beloit, or with respect to a reasonable minimum rate from any mine, origin or origin group in Indiana to Beloit.

11. The order of the Commission in so far as it requires the respondents to cease and desist from practicing the alleged unjust discrimination under Section 2 of the Act and the alleged undue prejudice and preference under Section 3 (1) of the Act, found in the report to exist, and to publish and maintain and apply rates and charges that will avoid and remove said unjust discrimination and undue prejudice and preference with respect to the rates to

Beloit, is illegal, arbitrary, unreasonable and beyond the power of the Commission, and therefore void, because there is no evidence in the record regarding the rates to Beloit to support the findings and conclusions in the report upon which said order is predicated, or to support such order.

IX

The report and order of the Commission are illegal, arbitrary, capricious, inconsistent and unreasonable, and therefore void, because the report makes statements of alleged fact and purported findings of fact which are contradictory and which are not supported by the evidence. [fol. 2-25] Some of such statements of purported fact and purported findings of fact are as follows:

1. The statement in the report (263 I.C.C. 179, 181) that:

> "Because of these reductions (the intrastate reductions made in 1930) the interstate rates from Indiana and western Kentucky to Rockford and other northern Illinois points were likewise reduced."

is erroneous because contrary to the facts established by uncontradicted evidence showing there was no reduction in the rates from Indiana to Rockford and other northern Illinois points. When the Milwaukee in 1932 reduced its rates to meet the reductions made in the Illinois intrastate rates there were no other reductions in the rates from Indiana.

2. Referring to the standard differential as between the Indiana groups and the Illinois groups, restoration of which was sought by the Indiana interests, it is said (263 I.C.C. 179, 184):

> "Such restoration would have been largely accomplished under the proposed adjustment as approved by us in *Coal to Illinois and Wiscosin, supra*, except from the Princeton and Boonville groups."

The proposed adjustment involved in that decision would not have restored the standard differential relationship except from the Brazil-Clinton and Linton-Sullivan districts, but the rates approved by the Commission in that case would have restored that standard differential re-

lationship from all of the Indiana groups. This fact is shown in Appendix A to the report in this proceeding, which shows the rates approved from Indiana to the Illinois destinations and the rates approved to Beloit from both Illinois and Indiana groups. The report in that case shows that the rates approved from Indiana, together with the intrastate rates proposed in Illinois, would have largely [fol. 2-26] restored the standard differentials to northern Illinois destinations.

3. The statement in the report (263 I.C.C. 179) that:

> "The record is convincing that once this dual basis becomes effective at Beloit, it will quite certainly spread to other points in Wisconsin served by the Milwaukee, of which there are many."

is not supported by any evidence in the record. It is contrary to the record and to other statements in the report which show that to all destinations in southern Wisconsin the rates from the Indiana and Illinois mines are on the basis of the standard differential, and that such rates have been approved by the Commission in its decision in *Illinois Coal Traffic Bureau* v. *A. & W. Ry. Co.*, 204 I.C.C. 225. There is no evidence of any intention, present or future, of changing any rates to any other destination in Wisconsin.

4. The puported finding of fact No. 10 (263 I.C.C. 179, 192) that:

> "The proposed adjustment would continue the present maladjustments and inconsistencies, and would extend them also to Beloit and to the Princeton group, thus laying the foundation for a further spread of the dual-rate basis to numerous additional points in Wisconsin."

is not supported by any evidence in the record of any intended or contemplated changes in rates to any points in Wisconsin. On the contrary, the evidence shows that the Commission has approved the present basis to Beloit and to other points in Wisconsin, and that the changes proposed in the relationship of rates to Beloit were made by the carriers in an effort to comply with the Commission's order in the case of *Fairbanks-Morse & Co.* v. *Alton & S. R. Co.*, 251 I.C.C. 181.

[fol. 2-27] 5. The statement (263 I. C. C. 179, 194) that:

> "It seems plain, however, that the attitude of both the Southern and of the Illinois Central in this respect is motivated largely by the relatively low rates from the Brazil and Linton groups maintained or herein proposed by the Milwaukee."

is erroneous because there is no evidence in the record as to what motivated the Illinois Central in maintaining its present rates or in proposing its new rates to Rockford, other than attempting to comply with the order in the *Fairbanks-Morse & Co.* case. The Illinois Central proposed rates to Beloit 15 cents per ton higher than the proposed joint-line rates to Rockford. No representative of the Illinois Central testified on the subject. Representatives of the Southern testified that they maintained the present rates to Beloit so that mines on the Southern in Indiana would be in a position to compete with Illinois coal. The statement that the rates of the Milwaukee are relatively low is not supported by the evidence.

6. The statement (263 I. C. C. 179, 195) that:

> "The transportation conditions over the single-line routes of the Milwaukee and the Illinois Central do not differ materially from those over the joint-line routes * * * from other mines in the same group * * *."

is not supported by any evidence in the record. There is no evidence in this record by which the transportation conditions over the single-line routes of the Milwaukee and the Illinois Central from Brazil-Clinton or Linton-Sullivan can be compared with transportation conditions over the joint-line routes from other mines in those groups to the same destinations.

7. The statement (263 I. C. C. 179, 195) that:

> "The situation presented is in principle similar to that before us in *Fairbanks-Morse & Co.* v. *Alton S. R. Co.*, *supra*, pages 201-06, wherein we found that [fol. 2-28] the maintenance of higher rates from 6 mines in the southern Illinois district to Janesville and Clinton Junction, Wis., was unduly prejudicial and

> preferential to the extent that they exceeded the contemporaneous rates to the same destinations from the other mines in the same district."

is erroneous because there is no evidence of record in this case regarding any of the elements necessary to sustain a finding of unjust discrimination under Section 2 of the Act, or undue preference or prejudice under Section 3 of the Act, whereas the facts recited in the decision in the *Fairbanks-Morse & Co.* case referred to in the report show the essential facts of such preference and prejudice.

8. The statement (263 I. C. C. 179, 196) that:

> "Differences in competitive conditions, where they exist, reflect themselves largely in the statistics of production and tonnage moved from the respective groups, * * *"

is erroneous because there is no evidence of record to support that statement. Many factors, such as exhaustion of mines, opening of new mines, and extension of group boundaries affect reported production and shipment from a given group.

9. Purported finding No. 1 is erroneous where it states (263 I. C. C. 179, 213):

> "In *Intrastate Rates on Bituminous Coal in Illinois, supra*, we declined to require increases in the relatively low intrastate rates from the southern Illinois group to Rockford, Freeport, and Dixon unless and until the rates on like traffic from the Indiana groups to the same destinations were increased more nearly to the basis of other interstate rates in the same territory."

As shown by the report of the Commission in *Intrastate Rates on Bituminous Coal in Illinois*, 182 I. C. C. 537, the Commission based its decision on a comparison of dis- [fol. 2-29] tances from the southern Illinois and Brazil-Clinton groups to Rockford and Dixon, comparing the short line distance from southern Illinois with the average distance from all mines in the Brazil-Clinton group, and determined the percentages of the rates and distances so compared under a mileage scale of rates; no reference

was made in that case to the other interstate rates in the same territory. If the Commission in that case had compared like with like, *i. e.*, the average distance from all mines in the southern Illinois group with the average distance from all the mines in the Brazil-Clinton group, the comparison would have shown the Indiana rates on a higher level than the Illinois rates; or if it had compared the short rate making line distance from the Indiana group with the short rate making line distance from southern Illinois, such comparison would also have shown the Indiana rates to be on a higher level than the Illinois rates. That fact was pointed out in the evidence in this proceeding and not contradicted.

10. Finding No. 3 of the report (263 I. C. C. 179, 213) is erroneous because it assumes a non-existent fact in stating that:

> "The Milwaukee * * * instead of joining with the other Indiana carriers in an effort to increase the rates from Indiana * * * reduced its single-line rates * * *."

There is no evidence of any effort on the part of other Indiana carriers to increase rates from Indiana after the decision in *Intrastate Rates on Bituminous Coal in Illinois*, *supra*. The finding assumes that other carriers were thwarted in such an effort to increase the Indiana rates by the action of the Milwaukee.

The further statement in said finding that:

> "This resulted in a dual basis of rates from the [fol. 2-30] Brazil and Linton districts, that is, lower rates from mines on the Milwaukee than from mines on the other carriers serving those respective districts to the same destinations."

is misleading, inaccurate and not based on evidence. It is true that the rates of the Milwaukee were lower than those of other carriers serving the Brazil and Linton districts, but it is not true that the rates published in 1932 by the Milwaukee created a dual basis. There were then, as there are today, different rates published by different carriers from the same groups to some of the same destinations. There is no evidence in this record that in 1932 the rates from all mines in the Brazil dis-

trict were the same to each destination in northern Illinois. The report in *Coal from Indiana to Illinois*, 197 I. C. C. 245, shows that the rates to some destinations were not uniform from those groups.

The statement in said finding that the "Respondents now propose to extend the dual basis of rates so it would apply also from the Indiana groups to Beloit", is misleading. The so-called dual basis of rates now applies at Beloit from the Belleville and Centralia groups in Illinois. The dual basis of rates at Beloit from the Indiana groups would result not from any change in the rates proposed by the Milwaukee or the Southern, but because other carriers serving Indiana mines propose to increase their rates to Beloit to a level higher than the rates from Illinois to Beloit.

11. Finding No. 4 (263 I. C. C. 179, 214) contains statements of generalities which do not apply and are not correct. To say that:

> "The average distances over the single-line routes of the Milwaukee * * * are approximately the same as, and in some instances less than, those over the joint-line routes from the same origin districts to the same destinations * * *."

[fol. 2-31] is improper because they are not the same in any instance and in most instances are less than the distances from other mines via joint-line routes. For example, to Byron, the distance via the Milwaukee from Brazil-Clinton is 234.4 miles; from mines on the New York Central and the Pennsylvania, the distances are 282 and 319 miles, respectively; from miles on the C. E. & I. and the B. & O. the distances are 240 and 242 miles, respectively. The average from mines other than the Milwaukee is 255.6 miles. There are three rates applying from Brazil-Clinton to Byron.

The statement in said finding No. 4 that:

> "In general, all of the mines in these districts produce coal of the same quality and grade * * *"

is erroneous. There is no evidence in the record to support that statement. It is contrary to the actual facts. If the Commission considered the competitive situation important, it should have reopened this case to permit evidence

of the competitive situation that actually exists and of the qualities of the coals produced in the various districts.

12. Finding No. 5 (263 I. C. C. 179, 214) is erroneous because it is partially true and partially false. It is true with respect to destinations to which the Milwaukee and the Illinois Central publish single-line rates which are lower than the rates published by other carriers in the Brazil-Clinton and Linton-Sullivan groups, but it is untrue as to destinations to which the Milwaukee and the Illinois Central publish rates which are on the same level as the predominant rates from the Brazil-Clinton and Linton-Sullivan groups to such destinations. It is inconsistent with other findings and conclusions in the report in stating that the differentials as between the single-line rates of [fol. 2-32] the Milwaukee from Brazil-Clinton and Linton-Sullivan and the joint-line rates from Princeton and Boonville "are greater than are warranted by the respective differences in distance". For example, the Milwaukee distance from Linton to Rockford is 273 miles; the distance from the Algers, Winslow & Western mines in Princeton-Ayrshire, via routes in which the Milwaukee participates, is 371 miles, a difference of 98 miles, and the difference in rates is 19 cents. As between Springfield and southern Illinois to Rockford, the differential is 30 cents for a difference in distance of 106 miles, which differential is approved in this report and has existed for years.

The distance via routes in which the Milwaukee joins from Princeton to Rockford is 84 miles longer than the Milwaukee's single line route from Linton. As between the Danville and the DuQuoin groups in Illinois, the difference in distance is 86 miles, and the difference in rate approved in the report in Appendix D is 19 cents.

13. Finding No. 6 (263 I. C. C. 179, 215) is erroneous because it is a mixed finding of fact and conclusion of law. As a statement of fact it is erroneous because, in stating the distance via certain lines approximates the average distance from the group as a whole, such average distance includes the line having the longer haul and higher rate. Proper comparison should be made of the line having the longer haul with the average of other lines serving the district. From Princeton-Ayrshire to Rockford the rate of

the B. & O. is $2.14 for a haul of 405 miles; the average of the group is 371 miles. Three lines have a rate of $2.09 for an average haul of 364 miles. The carrier with a haul of 371 miles charges $2.27, and the B. & O., with a haul of 465 miles, charges $2.14. It is erroneous as a con- [fol. 2-33] clusion of law, because it would deprive the carriers from initiating and maintaining rates within the zone of reasonableness of minima and maxima that do not violate the provisions of the Act.

The part of the finding, "In the absence of any justification therefor, the rates from such mines should not exceed those herein approved from the respective districts of which they are a part," is erroneous because nowhere in the report or findings is there any indication of what such justification might be.

Said finding No. 6 is inconsistent, arbitrary and capricious in that it requires carriers which publish rates higher than other carriers serving a group to reduce such rates to the rates of such other carriers, but permits carriers which do not publish any specific rate from a group to a destination to continue to omit publication of a specific rate.

14. Finding No. 9 (263 I. C. C. 179, 215) is erroneous in that it is not based upon evidence of record and is not a finding of fact. It deals with a subject matter upon which there was no hearing or order for hearing. It is erroneous as a conclusion of law because it would deprive carriers of their right to initiate and maintain rates within the zone of reasonableness, minima and maxima, so long as such rates are not otherwise in violation of the Act. Further, it is erroneous as a conclusion of law because it would enable carriers serving a majority of origins in a group to impose their rates upon other carriers serving origins in the same group.

15. Finding No. 11 (263 I. C. C. 179, 215) is erroneous, is not supported by, but is contrary to the evidence with respect to the rates to Rockford, Freeport, DeKalb, Belvidere, Geneva and many other destinations in Illinois. It is true with respect to the rates to Sterling, Forreston and [fol. 2-34] Rochelle, Illinois, and other points in northern Illinois west of Rockford.

16. Finding No. 12 (263 I. C. C. 179, 215) is erroneous because it is not based on evidence, as the action of the

carriers in filing the new schedules which were suspended shows there was agreement between them to maintain the present relationship in the rates from Illinois and Indiana to Illinois destinations. The conclusion of law in said finding No. 12 that:

> "the record in these proceedings being adequate for the purpose, it is incumbent upon us to determine, and if need be prescribe, such an adjustment."

is erroneous and contrary to fact, in that the Commission had no jurisdiction or power in this proceeding to pass upon the present rates or rate relationships, and there is no evidence to support it in prescribing such adjustment.

17. Finding No. 13 (267 I. C. C. 179, 216) is erroneous in that so far as it purports to state facts, such statements are contrary to and are not supported by the evidence. There is no evidence of difference in distance of the haul between any one mine in Boonville and any one or more mines in the Princeton-Ayrshire group to any one destination. The evidence shows that from mines served by the Southern Railway in Princeton and mines served by that carrier in Boonville, the difference in distance ranges from 46 miles to 76 miles. Appendix D to the report shows that the average difference in distance between all mines in the Boonville group and all mines in the Princeton group is 34 miles.

The conclusion of said finding that:

> "Accordingly, the rates from the Boonville mines to these destinations should not exceed those from the Princeton district to the same destinations"

is erroneous, inconsistent, arbitrary and capricious, in that [fol. 2-35] in this proceeding the Commission has found and required that the difference in rates between the Brazil-Clinton and Linton-Sullivan groups, for an average difference in distance to the twelve representative points in Illinois of 37 miles, be not less than 10 cents, but would require an equality of rates between Princeton-Ayrshire and Boonville for an average difference in distance between the two groups of 34 miles.

18. Finding No. 17 (263 I. C. C. 179, 216) is not supported by, but is contrary to, the evidence in so far as it states:

> "* * * as an indirect result thereof (allegedly low rates in Illinois) by reason of the relatively low level of the interstate rates from Indiana to the same northern Illinois destinations, which are held down by the intrastate rates referred to, respondents are suffering an additional loss of revenue of not less than $50,000 per annum."

The evidence shows, and the Appendices to the report show, that to many of the destinations the present rates from Indiana are on a higher level than the present rates from Illinois to the same destinations. The conclusion in said finding that:

> "Under the rate adjustment herein approved * * * respondents' annual revenues may reasonably be expected to be increased by at least the foregoing amounts,"

is an erroneous and misleading statement, because while the revenues of some of the respondents would be increased, the revenues of others would be reduced. By depriving Indiana mines of an ability to make any shipments to the territory, the carriers serving those mines would lose not only the revenue covered by the increases in rates, but would lose the revenue from the present rates; the revenues [fol. 2-36] of the carriers serving Illinois mines would be increased not only by the amount of the increased rates on the tonnage now moving from Illinois, but also by the revenue presently derived by the carriers serving Indiana under the present rates.

19. Finding No. 19 (263 I. C. C. 179, 217) is contrary to the evidence in so far as it includes the interstate rates from Indiana in its content. None of the present inconsistencies are removed as between the rates from Illinois and those from Indiana; new inconsistencies are added by the approved rates.

X

The report and order of the Commission are illegal, arbitrary, unreasonable, inconsistent, capricious, beyond the power of the Commission, and therefore void, because:

1. The report and order purport to apply to all rates from all the Indiana groups, and the relation of the rates from those groups to the rates from all the Illinois groups, other than the northern Illinois group, to the destinations involved. The Commission has only considered and acted upon the rates and distances via one of the several carriers serving the same origin points. Few origin points in Indiana are served by more than one carrier, while numerous origin points in Illinois are served by two, three or four carriers. The average distances from Illinois origin groups shown in the report do not represent the minimum service performed by all the carriers, but only the service of the carrier having the shortest haul; there is no evidence that such carrier hauls any part of the traffic from any of the origin *hauls any part of the traffic from any of the origin* points served by two or more carriers.

[fol. 2-37] 2. There is no evidence showing the average distance from Linton-Sullivan to Rockford to be 300 miles, as stated in the report; the average shortest tariff route distance of 292 miles shown in evidence is wrong because it uses the haul via the Illinois Central's single line instead of the short tariff route distance from mines on the Illinois Central, the difference between the two routes is 37 miles.

3. The report, and Appendices A and D thereto, are arbitrary and inconsistent in that in dealing with average distances from the Indiana groups the distances via all carriers serving such groups are used, whether or not such carriers publish higher rates than the general rate applying from the group, and in many instances whether or not some of the carriers publish any specific rates from the group; while from the Illinois groups the Commission omitted distances via a carrier publishing higher than the general rate in some cases and in other cases included such distances, where to do so would reduce the average distance from the Illinois group. For example, the report states the average shortest tariff route distance from the Belleville group to Beloit to be 358 miles; no such distance

is shown in the evidence; it is arrived at by including the shorter distances via a route having a higher rate from certain mines in the Belleville group. From the Centralia group, the distance to Beloit is shown in the report as 283 miles; no evidence shows such distance; it is arrived at by omitting the distance via the line of a carrier serving mines in Centralia at a higher rate than the general Centralia rate to Beloit. From Princeton-Ayrshire, the average distance to Rockford shown in the report includes the distances from mines served by the B. & O. and mines served by the A. W. & W., which publish rates higher than [fol. 2-38] the general rate from Princeton-Ayrshire to Rockford. In determining average distances from Illinois groups, from which some carriers do not publish specific rates to some destinations, no distance via such carrier was considered, but from the Indiana groups many distances via routes over which no specific rates are published are included in the average distance from the groups.

4. The report states that the rates from Indiana and the intrastate rates within Illinois to these northern Illinois destinations should be on the *same* level; the report approves rates from Indiana on a *higher* level than the rates from Illinois to the same destination, a few examples of which, shown in Appendix A, are as follows:

A. To Rockford, Illinois, from Brazil-Clinton group, Indiana, distance 251 miles, rate $2.07; from Springfield group, Illinois, distance 257 miles, rate $1.95; from Linton-Sullivan group, Indiana, distance 300 miles (should be 290), rate $2.17; from Centralia, Belleville, and DuQuoin groups, Illinois, distances 316, 332 and 304 miles, respectively, rate $2.15.

B. To Geneva, Illinois, from Brazil-Clinton, distance 217 miles, rate $1.84; from Springfield, distance 230 miles, rate $1.75; from Linton-Sullivan, distance 249 miles, rate $1.94; from Belleville, distance 353 miles, rate $1.95; from Princeton-Ayrshire, distance 313 miles, rate $2.01; from southern Illinois, distance 382 miles, rate $2.05.

C. To Beloit, Wisconsin, from Brazil-Clinton, distance 269 miles, rate $2.22; from Springfield, distance 276 miles, rate $2.10; from Linton-Sullivan, distance 302 miles, rate $2.32; from Belleville, distance 358 miles (should be 380 miles), rate $2.30.

[fol. 2-39] 5. The report approves and the order requires the publication and maintenance of rates from Indiana to destinations in northern Illinois on the basis of the rates described in the report. Nowhere in the report is there any discussion of any of such rates, nor is there any statement of fact or any consideration given to the rates to any of the twelve so-called representative points in northern Illinois from any of the groups. Individual rates are approved to each of the twelve points from each of the Illinois and Indiana groups, but there are different relationships as between the Indiana groups on the one hand and the Illinois groups on the other at the various destination points. For example, to Belvidere, Illinois, the rates from Brazil-Clinton are 18 cents under those from southern Illinois for a difference in distance of 170 miles; at Sterling, Illinois, 16 cents under for a difference in distance of 42 miles; at Geneva, Illinois, 21 cents under for a difference in distance of 165 miles; at Forreston, Illinois, 25 cents under for a difference in distance of 83 miles; at Rochelle, Illinois, 16 cents under for a difference in distance of 100 miles; and at Ambo, Illinois, 16 cents under for a difference in distance of 67 miles.

6. Appendix D purports to show the average distance and average rate from each of the groups in Illinois to all of the twelve destinations. The only discussion of the relationships to these Illinois points is a discussion of the average distance and average rate from one group to all of the points, as compared with the average distance and average rate from another group to all of the points; and of the average rate and average from all groups in Indiana and all groups in Illinois to all said destinations. There is no discussion and there is no finding that the rates to [fol. 2-40] any individual destination are just, reasonable and non-discriminatory, except the conclusion made a part of finding No. 19 that "the approved rates * * * * result in a reasonable, non-discriminatory and non-prejudicial adjustment both on interstate traffic and as between such traffic on the one hand, and Illinois intrastate traffic on the other." Even to Rockford, which was stated in the evidence to be the key point in the Illinois destination adjustment, there is no discussion as to the propriety of the approved rates shown in Appendix A. There is no finding that the rate from the Springfield group in Illinois of $1.95

for 257 miles is just, reasonable and non-discriminatory, as compared with a rate from Brazil-Clinton to Rockford of $2.07 for 257 miles; nor is there any finding as to why a $1.95 rate of the Milwaukee from Brazil-Clinton to Rockford via its direct line for a haul of 237 miles is unlawful, when compared with the same rate from the Springfield group for a haul of 257 miles, or with the hauls of other carriers serving that group, some of which average as high as 325 miles.

7. The Commission in its report has compared the rates by using the so-called Illinois-Indiana Scale and the Midland Scale as yardsticks, and has stated that it is recognized that rates for more distant groups should not be based primarily upon distance, and that it is the common practice in adjusting differentially related coal rates of according diminishing weight to distance as length of haul increases. The approved rates to the individual destinations shown in Appendix A ignores this principle. For example, to Belvidere, Illinois, the approved rate from the Brazil-Clinton group is $2.07 for 258 miles, or 94.1 per cent of the Illinois-Indiana Scale. From the Springfield group, the approved rate for 279 miles is $1.95, which is but 84.8 [fol. 2-41] per cent of said scale. From the Danville group, 262 miles, the approved rate is $1.95, 88.6 per cent of said scale; from the Princeton group, for a haul of 364 miles, the approved rate is $2.24, or 88.2 per cent of said scale; and from the DuQuoin group, for 363 miles, the approved rate is $2.15, or 84.6 per cent of said scale. To Beloit, Wisconsin, the approved rate from Brazil-Clinton is $2.22 for a haul of 269 miles, 100.9 per cent of the scale; from Fulton-Peoria the approved rate of $1.80 for 170 miles is 100 per cent of the scale; whereas from Springfield the rate of $1.95 for 276 miles, substantially the same distance as from Brazil-Clinton, is 88.6 per cent of the scale. In dealing with Illinois rates, for example, to Dixon the approved rate from Fulton-Peoria of $1.55 for 124 miles is 100 per cent of the scale; while from Danville the rate of $1.85 for 222 miles is 92.5 per cent of the scale. As between the Illinois groups the principle, that as distance increases the percentage of the scale decreases, is recognized, whereas as between the Indiana groups and the Illinois groups that principle is ignored. At Sterling, Illinois, where the hauls from Indiana are longer than from Illinois, the reverse

position is taken. From Brazil-Clinton, a distance of 287 miles, the approved rate is $1.89, 82.2 per cent of the scale; whereas from Springfield, for 184 miles the approved rate of $1.75 is 92.1 per cent of the scale. The approved rate from Springfield is 14 cents less than the approved rate from Brazil-Clinton. The Commission has recognized that a few cents per ton in delivered costs, which includes the freight rate, controls the purchase of coal.

8. The comparison of the average of the rates from the Indiana groups to all of the destinations and from the Illinois groups to all of the destinations, does not establish the propriety of the rates to any of the destinations. [fol. 2-42] The erroneous and inconsistent treatment accorded in the report and order of the Commission of approving relatively higher rates from Indiana and relatively lower rates from Illinois to the destinations east of Rockford, while approving relatively low rates from Indiana and relatively high rates from Illinois to destinations west of Rockford, and averaging the two improper sets of rates, does not result in a reasonable, non-prejudicial and non-discriminatory rate at Rockford, or at any of the destinations.

9. The report discusses and deals with so-called average rates and average distances from the various groups to all of the twelve destinations in northern Illinois and the average rates and average distances from all groups in Illinois and all groups in Indiana to such destinations. The report shows that the average distances are on the basis of the shortest tariff distances, but does not state the method of determining average rate. An analysis of the average rates shows that the Commission has multiplied a group rate by the number of distances from the origin group to a destination and has added the products of such multiplication from each group to each destination for the number of destinations considered, and divided the sum thereof by the total number of distances from the group to all destinations to arrive at the average rate to all destinations. This has been done notwithstanding the fact that only one rate applies from the group via each carrier serving the group. This method of computation is erroneous.

10. The report recites that to Beloit, Wis., the approved rate from the Brazil-Clinton group is $2.22 for 269 miles,

which is 100.9 per cent of the Illinois-Indiana Scale, and the rate of $2.10 from Springfield for 276 miles is 91.3 per [fol. 2-43] cent of said scale, and states that the Springfield rate is on a "somewhat" lower level than the rate from Brazil-Clinton, but that the Springfield rate is the customary 30 cents under southern Illinois to Wisconsin destinations. The report omits to state that the Brazil-Clinton rate is customarily 30 cents under southern Illinois to destinations in southern Wisconsin. The report further states that the southern Illinois rate of $2.40 for 394 miles, which is 91.6 per cent of the scale, is "slightly" higher than the approved rate from the combined Princeton-Boonville group rate of $2.39 for 387 miles, and that the rate from Springfield is "something lower" than the rate from Brazil. The southern Illinois rate 4/10ths of a percentage point higher than the Princeton-Boonville rate is stated to be "slightly" higher, while the Springfield rate, 9.6 percentage points lower than the Brazil-Clinton rate is stated to be "somewhat lower". Measured by the scale 9.6 percentage points amounts to 21 cents or 22 cents, while 4/10ths of a percentage point amounts to 1 cent. To term the one "somewhat lower" and the other "slightly higher" is unreasonable, capricious, and arbitrary.

11. The report states that the differential between Princeton and Linton of 7 cents for a difference in distance of 77 miles is relatively low, but the report approves rates combining the Princeton and Boonville districts which combined average distance exceeds the distance from Linton by 85 miles. In the same paragraph in which it condemns the said 7-cent differential as being relatively low, the report approves rates from Linton-Sullivan to Beloit of $2.32 for 302 miles, and from southern Illinois to Beloit of $2.40 for 394 miles, where there is a difference of but 8 cents for a difference in distance of 92 miles.

[fol. 2-44] 12. The evidence shows the average shortest tariff route distance from the Illinois groups to Beloit is 306 miles and the average rate $2.15, which is 90.3 per cent of the Illinois-Indiana Scale. The average of the approved rates from Indiana is 94.3 per cent of that scale. It is inconsistent, arbitrary and capricious to say that rates that are 94 per cent of the scale are on substantially the same level of rates as from Illinois, which are but 90 per cent of

the scale. The report recognizes the highly competitive situation between the coals of the two States and that a few cents per ton will control the purchase of coal, but the report approves rates from Indiana which on the average are 10 cents per ton higher in level than the rates from Illinois, measured by the yardstick of the Illinois-Indiana Scale.

13. The report contains many statements regarding the production of coal in the various groups in Indiana and in Illinois, and in each of the two States as a whole, which are not material to any of the issues in the case; also comparisons of the production in former years and in 1936, 1940 and part of 1941 in the various Indiana groups, only a small portion of which production moved to the territory involved in this proceeding. The report recites shipments from Illinois origins into Indiana, a territory not involved in the proceeding; it discusses shipments of coal from Illinois and Indiana to Wisconsin and Iowa, a territory which, aside from Beloit, is not involved in the proceeding. The report discusses shipments to Rockford, Freeport and Dixon to show that Indiana had a greater increase in its shipments of coal in 1941 over 1936 than did Illinois, ignoring the fact that for four years, 1930 to 1934, the Milwaukee did not publish rates to Rockford on the level of the Illinois rates, at which point the increase in Indiana shipments took place, [fol. 2-45] and that to Dixon there was a decrease in the tonnage from Indiana and an increase from Illinois. Of the seven destinations in Illinois to which shipments of coal are shown in the record, the shipments in 1941 from Indiana decreased to a greater extent that the shipments from Illinois, except to Rockford, where the Indiana coal had been out of the market for four years, a position which had not been re-established in that market in 1936.

14. Dealing with the total production of the Indiana groups, the Commission in its report ignores the uncontradicted evidence that in 1930 the Princeton-Ayrshire group was enlarged by the addition of mines on the Southern Railway, formerly in the Boonville group, which in that year were accorded the Princeton rate, but attributes the increase in production from the Princeton district to the rate adjustment, rather than to the fact that the district was enlarged by including within it the many mines that had formerly been in the Boonville district.

15. The report states that the carriers expect the same relative shipments, under the proposed rates as occurred under the present rates to the destinations in northern Illinois, but fails to point out that the proposed rates maintain the exact relationship existing under the present rates, whereas the approved rates materially change the present relationships, particularly by requiring increases in the rates from mines on the Milwaukee and the Illinois Central to Rockford and other destinations in northern Illinois amounting to 12 cents per ton more than the proposed increase, and in this respect ignoring the fact that of the coal that moved from Indiana to these destinations the great bulk of it moved from mines on the Milwaukee or the Illinois Central.

[fol. 2-46] **XI**

The report and order of the Commission are illegal, arbitrary, unreasonable and beyond the power of the Commission, and therefore void, because the report discards by inference the undisputed testimony and exhibits introduced by these Petitioners, which were material to the issues in the proceeding, viz.:

1. The carriers and these Petitioners, through the Coal Trade Association of Indiana, introduced evidence showing the average distance from each of the groups in Illinois and Indiana to Rockford, Freeport, Dixon and other destinations in Illinois and to Beloit, Wisconsin, via the short tariff routes of all the carriers serving mines in those groups. This evidence was disregarded and the Commission considered only the distances from the groups via the shortest tariff routes of the carriers, that is, where more than one carrier serves an origin point, it considered the route of the carrier having the shortest haul from such origin to the destination.

3. The report ignores evidence that in reaching its conclusion in the case of *Intrastate Rates on Bituminous Coal Within Illinois*, 182 I. C. C. 537, that the rates from Brazil-Clinton, Indiana, were on a lower basis than from southern Illinois to Rockford and Dixon, the Commission compared unlike things, *i. e.*, the short rate making line distance from southern Illinois and the average distance from all mines in the Brazil-Clinton group; that comparison of like with

like would have shown that the rates from Brazil-Clinton to Rockford, Freeport and Dixon were on a higher level than those from southern Illinois.

4. The report ignores evidence introduced by these Peti- [fol. 2-47] tioners, through the Coal Trade Association of Indiana, of the average of the present rates, and the average of the proposed rates from Indiana and Illinois to the twelve destinations selected by Indiana as representative of the destination territory, and to the twelve destinations selected by the carriers as representative of that territory, and ignores evidence of the average rates that would result from a restoration of the standard differential adjustment, which formerly applied to this territory from Indiana and Illinois, based upon the proposed rates from southern Illinois, which rates would be on a substantially equality of level as between Indiana and the intrastate rates in Illinois to those destinations.

5. The report states that the distance between one mine in the Boonville district and one mine in the Princeton district is 10 miles, whereas the evidence shows that the difference in distance, so far as transportation of coal from the two mines is concerned, is not less than 46 miles. In approving rates from Princeton-Ayrshire and Boonville on the same basis, the Commission ignores this evidence. It also ignores the fact that there are eight mines in the Boonville group and considers only one of such mines.

XII

The Commission erred in denying the petition of these Petitioners, filed on their behalf by the Coal Trade Association of Indiana, to reopen the case and grant rehearing and reconsideration herein. The Commission has repeatedly held heretofore that rates on coal should not be based on quality, and that it can not regard economic conditions in determining the propriety of rates. In this case it considers, and apparently predicates its order upon, competitive conditions in the coal industry, the movement [fol. 2-48] of coal from the various groups to the destination territory, and to many destinations not here involved; and also states that these competitive commercial conditions must be given weight in the determination of the issues. The Commission, having adopted a new policy in this

case, should have granted the petition of these Petitioners to reopen the case so as to give them an opportunity to introduce evidence with respect to this commercial competition and the qualities of the coals and the reasons why the shipments from one district had decreased and those from another had increased.

XIII

The report and order of the Commission are illegal, arbitrary, unreasonable and beyond the power of the Commission, and therefore void, because they require the carriers to increase rates which have not been shown to be less than reasonable minimum rates, and require this without any evidence in the record upon the subject of what is or is not a reasonable minimum rate for any of the transportation service here involved.

XIV

The order of the Commission is illegal, arbitrary, unreasonable and beyond the power of the Commission, because it requires the carriers as they participate in the traffic, to maintain rates on a certain basis to destinations in northern Illinois and to Beloit on the bases of rates stated as approved in the report, when there are no findings in the report that such approved rates to each of the destinations named are just, reasonable, non-discriminatory and non-prejudicial and non-preferential, and no facts are set forth [fol. 2-49] in the report with respect to such individual rates which the Commission states are approved.

XV

The order of the Commission is illegal, arbitrary, unreasonable and beyond the power of the Commission, and therefore void, because it approves rates to Beloit, Wis., and to Rockford and other destinations in northern Illinois to overcome economic and commercial conditions and to increase the movement of coal from Illinois to those destinations and correspondingly reduce the movement of coal from Indiana groups to such destinations.

XVI

The report and order of the Commission are illegal, arbitrary, unreasonable and beyond the power of the Commission, and therefore void, in that the purported findings of

fact and conclusions stated in said report are not supported by substantial evidence and are not clear, definite and complete findings of fact.

XVII

The action of the Commission in denying the petition of these Petitioners for reopening, rehearing, reargument, reconsideration and postponement of the effective date of the order, filed September 27, 1945, was illegal, arbitrary and unreasonable.

[fol. 2-50] XVIII

The report and order of the Commission, as subsequently amended, require respondents to establish on or before February 8, 1946, upon not less than thirty (30) days' notice in the manner prescribed in Section 6 of the Interstate Commerce Act, rates which, if established, will be materially higher than the rates now assessed upon shipments of coal from Indiana to destinations in northern Illinois and to Beloit, Wis., and which will materially change the relationship presently existing in the rates as between some of the origins in Indiana to Rockford, Freeport and other destinations in Illinois, and which will materially change the existing relationship between the rates from Indiana groups and Illinois groups to Beloit, Wisconsin, and to destinations in Illinois. Unless the enforcement of said order is enjoined, Petitioners will suffer irreparable injury and damage from the loss of business at such northern Illinois destinations and at Beloit, Wis., and will be required to pay higher rates upon any coal that might be shipped to that territory under uncancellable contracts.

If such new rates should be put into effect by the filing of tariffs, as required by said order, Petitioners, even if such order should later be set aside as unlawful, would be unable to recover the loss in their revenue which they would sustain by the inability to ship coal to those markets during the period such rates are in effect.

Petitioners have no plain, adequate or complete remedy at law in the premises.

[fol. 2-51] Wherefore, Petitioners respectfully pray:

1. That upon the filing of this petition, a subpoena be issued against the defendant, United States of America, as required by law, and that due and proper service of such

subpoena and of this petition be forthwith made by filing a copy thereof in the office of the Secretary of the Interstate Commerce Commission and in the Department of Justice, and that thereby defendant be required, on or before a date specified in such subpoena, to appear herein an answer this petition, but not under oath, answer under oath being hereby expressly waived.

2. That the Court, as soon as practicable, convene a specially constituted court of three judges, as required by 28 U. S. C. A. 47 (38 Stat. 220), to hear Petitioners' motion for a temporary or interlocutory injunction and for final hearing in this proceeding.

3. That pending final hearing of the cause, a temporary stay, or suspension of said order of July 9, 1945, as subsequently amended, be entered herein restraining, enjoining and suspending the execution, effect and enforcement of said order for not more than sixty days.

4. That upon final hearing of this cause, a permanent injunction be issued, decreeing that said order of the Commission, dated July 9, 1945, as aforesaid, is null and void and is set aside, annulled and suspended, in whole or in part, and that its execution, effect and operation be perpetually enjoined and restrained, and that the United States of America be restrained from taking any steps or instituting or prosecuting any proceeding to enforce said order.

5. That this Court grant to the Petitioners such other and [fol. 2-52] further relief as by it may be deemed proper in the premises.

Respectfully submitted, (S.) Earl B. Wilkinson, J. Alfred Moran, Ernest R. Baltzell, Paul Y. Davis. Resident Attorneys for Petitioners: Dailey, Davis, Hartsock & Baltzell, 1100 Hume-Mansur Building, Indianapolis 4, Indiana. Attorneys for Petitioners: Gallagher, Rinaker, Wilkinson & Hall, 231 South La Salle Street, Chicago 4, Illinois.

[fol. 2-53] *Duly sworn to by J. Alfred Moran. Jurat omitted in printing.*

[fols. 3-4] (Entry for December 21, 1945, Continued)

No. 1072 Civil

And thereupon there was issued out of the office of the Clerk of this Court a writ of summons for the defendant to the United States Marshal.

[fol. 5] [File endorsement omitted]

[fol. 5-1] IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION.

Civil No. 1076

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, Petitioner,

vs.

UNITED STATES OF AMERICA, Defendant

PETITION—Filed December 27, 1945

To the Honorable Judges of the District Court of the United States for the Southern District of Indiana, Indianapolis Division:

Comes now the petitioner and for its cause of action against the defendant states:

I

Petitioner is a corporation, organized and existing under and by virtue of the Laws of the State of Wisconsin, and owns and operates lines of railroad in the States of Indiana, Illinois, Wisconsin and certain other states, and is engaged in the transportation of property and persons for hire, both interstate and intrastate, as a common carrier [fol. 5-2] by railroad, subject to the Interstate Commerce Act. Petitioner has its principal office at Chicago, Illinois.

On December 1, 1945, under the terms of the modified Plan of Reorganization, approved by the United States District Court, for the Northern District of Illinois, Eastern Division, in a proceeding entitled "In the Matter of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, No. 60463", petitioner succeeded to all the rights

and obligations of Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, which Trustees had, since January 1, 1936, operated said railroad properties in said reorganization proceedings. The petitioner and the Trustees will sometimes herein be referred to as the "Milwaukee Road".

II

The Coal Trade Association of Indiana, protestant, upon whose petition the Interstate Commerce Commission suspended certain tariff schedules, hereinafter referred to, and entered upon an investigation into rates proposed therein, following which a hearing was had and the order herein complained of was entered, is a voluntary association of corporations and firms owning and operating Indiana coal mines, having its principal office and residence in the Southern District of Indiana.

III

The defendant, United States of America, is sued under an Act of Congress, approved October 22, 1913, known as the "Urgent Deficiency Appropriations Act" 38 Stat. L. 219, to enjoin, set aside, and annul a certain order entered by the Interstate Commerce Commission on the 9th day. [fol. 5-3] of July, 1945 in a proceeding known as "Investigation and Suspension, Docket No. 5139, Coal to Beloit, Wisconsin and Northern Illinois", instituted by the Interstate Commerce Commission, hereinafter called "the Commission" by its order of July 30, 1942, upon the protest hereinabove referred to in paragraph II hereof.

IV

Following an order of the Interstate Commerce Commission, involving the rates on bituminous coal from mines in Illinois, Indiana and Western Kentucky to Beloit, Wisconsin, in a proceeding entitled "*Fairbanks-Morse & Co.* v. *Alton and Southern R. R.*", 251 I. C. C., 181, in which the Commission found that the involved rates to Beloit, although not unreasonable, were unduly prejudicial to Beloit and unduly preferential of Rockford, to the extent that they exceeded the rates to Rockford by more than 15c per ton, the Milwaukee Road, together with other rail-

roads serving mines in the origin territory, above referred to, filed, to become effective August 2, 1942, tariff schedules proposing to increase the then applicable rates from mines in Indiana, Illinois and Western Kentucky to Rockford by 15¢ per ton, and thereby reduce the difference in the rates applicable to Rockford and Beloit, from 30¢ per ton to 15¢ per ton as required by the Commission's order. (Unless otherwise indicated, all rates referred to herein are those applicable to the transportation of one ton.)

The Milwaukee Road proposed no change in its tariff rates applicable to the movement of coal from mines on its railroad to Beloit, those rates being $2.10 from mines in the Brazil district and $2.20 from mines in the Linton district; but proposed increases to Rockford from Milwaukee mines in the Brazil district from $1.80 to $1.95 and from those mines in the Linton district from $1.90 to $2.05. Other [fol. 5-4] necessary and related adjustments were made in its rates to destinations intermediate to Rockford.

The Commission, as above recited, suspended the operation of said proposed tariff schedules and, after hearing, the Commission required said proposed schedules to be cancelled on or before November 16, 1945 upon not less than one day's notice, and further required the filing of new tariff schedules containing the new rates here complained of to become effective the same date on thirty days' notice. The effective date of the order, requiring cancellation of proposed schedules and the filing of new, has been modified by subsequent orders to February 8, 1946.

V

For more than thirty-five years, the petitioner and its predecessors in interest have been engaged in the transportation of bituminous coal in carloads from mines in mining districts in Indiana, known as the Brazil and Linton Indiana groups. These mining groups are the most northerly of the mining districts in Indiana, and coal produced in mines located on the railroad of the petitioner can move over the direct single line route of the petitioner from the mines to Rockford, Illinois and other destinations on petitioner's line in Northern Illinois as well as to Beloit, Wisconsin. The coal produced in the mines in the Brazil and Linton coal mining groups on petitioner's railroad is in direct competition with coal produced in the various coal groups in Illinois. The Illinois coal is of such quality that

the producers of coal in mines located on the petitioner's railroad in Indiana are unable to compete in sales in the important industrial cities of Rockford, Illinois and Beloit, Wisconsin, unless they are accorded for the transportation of their coal, rates relatively no higher, distance and other [fol. 5-5] transportation conditions considered, than those accorded Illinois producers of coal.

Since January 1, 1910 to this date (except for an interruption during the period August 20, 1930 to April 22, 1934, which will hereinafter be explained) the rate per ton on bituminous coal from the Brazil, Indiana district mines on the Milwaukee Road to Rockford, Illinois has been the same, or lower than the rate per ton from the so-called Springfield group in Illinois to the same destination. Under this rate relationship, with the so-called Springfield group in Illinois and the resulting relationship with other related coal mining groups in Illinois, producers of coal in the Brazil mining district have been able to compete in the sale of coal at Rockford and other Northern Illinois destinations and Beloit, Wisconsin.*

During the period August 20, 1930 to April 22, 1934, by reason of reductions in rates applicable for the transportation of coal within Illinois, required by the Order of the Illinois Commerce Commission, rates on coal from the Brazil, Indiana mining district were higher by 17¢ per ton to Rockford, Illinois than those applicable from the Springfield, Illinois district to Rockford, and the difference in rates between those applicable from Brazil and Southern Illinois to Rockford was greatly reduced, resulting during that period in the practical elimination in the use of Indiana coal from the Brazil and Linton districts at Rock-

---

*The Commission refers to 1936 as a normal year in the coal industry and recites that in that year 369,492 tons moved from Illinois origins to Rockford, Freeport and Dixon, three important cities in the destination territory, as compared with 99,661 tons from all Indiana origins to those cities. See Exhibit "A", page 196. Although the year 1941 could not be considered a normal year, all business being influenced by war conditions, a rather complete statement of tonnages moving to Northern Illinois destinations and to Beloit, Wisconsin from Illinois and Indiana, taken from exhibits of record, is set forth at page 11 of Exhibit "C" hereto attached.

ford. The distances over the short tariff routes from the Brazil mining group to Rockford, Illinois and Beloit, Wis- [fol. 5-6] consin, the two most important coal consuming cities in the involved destination territory, are found by the Commission in its Report and Order of July 9, 1945 to be less than the distances over the short tariff routes from the Springfield, Illinois mining district to the same destinations, and other transportation conditions are found by the Commission to be sufficiently similar to require the same rate base, yet the Commission, by its Order of July 9, 1945, refuses to permit the petitioner to establish for the transportation of coal from mines on its railroad in the said Brazil district to Rockford and Beloit, rates no higher than those permitted to become effective for the transportation of coal from the Springfield, Illinois district to the same destinations and the said order requires the petitioner to publish and establish rates higher by 12c per ton than those permitted to be published for a greater distance from the Springfield, Illinois group to these important destinations.*

VI

A portion of petitioner's railroad, extending from Chicago in a southerly and easterly direction to Indiana and serving mines in the aforesaid mining districts in Indiana, is dependent for its successful and profitable operation to a very large extent upon the volume of coal traffic transported thereover; and, by petitioner's single line of railroad from mines on its railroad in the said Indiana districts to the important coal consuming destinations in Northern Illinois and Southern Wisconsin, the petitioner and its predecessors have for many years transported a large volume of coal. Unless the petitioner is permitted to [fol. 5-7] continue rates applicable for the transportation of coal relatively and actually no higher than those rates

* The Commission permits a publication of a rate of $1.95 per ton for 257 miles from Springfield to Rockford, but requires the petitioner to publish a rate of $2.07 for 251 miles from Brazil to Rockford. So too, the Commission permits the continuance of a rate of $2.10 for 276 miles from Springfield to Beloit, while requiring the petitioner to publish a rate of $2.22 for 269 miles from Brazil to Beloit. (See page 223, Exhibit "A".)

permitted to be effective from origins in Illinois to the same destinations for a greater service, then petitioner will lose revenues in large sums essential to the successful maintenance and operation of its railroad and the producers of coal at mines served by the petitioner will be unable to successfully sell their product in competition with those producers in Illinois who will enjoy a more favorable rate adjustment. The Milwaukee Road sought by a petition for rehearing and reconsideration to have the order, herein complained of, modified, and in said petition offered to show by evidence, if given the opportunity, the harmful effect of the rates required upon the Milwaukee Road and the mine operators it serves. The said petition for rehearing and reconsideration, filed on the 23rd day of September, 1945, was denied, without opinion, by the Commission's order of November 13, 1945.

VII

A copy of the Commission's Report of July 9, 1945 is hereto attached, marked Exhibit "A" and made a part hereof. Also attached, and made a part hereof, and marked Exhibit "C", is Milwaukee Road's petition for rehearing and reconsideration.

VIII

Petitioner avers and charges that the Order of the Commission entered in the Investigation and Suspension proceeding, No. 5139, on the 9th day of July, 1945, herein complained of, and set forth in full as Exhibit "B", insofar as it requires the petitioner to cancel rates applicable to the transportation of bituminous coal from mines on its lines of railroad from the Brazil and Linton districts in In- [fol. 5-8] diana to destinations in Illinois, and to publish in lieu thereof rates higher than those proposed, and to further publish rates higher than those presently applicable from said mines to Beloit, Wisconsin, is null and void and should in those respects be set aside for the following reasons:

(a) The Commission misconstrued the law and acted beyond powers delegated to it by Congress, in requiring the petitioner to cancel schedules proposing new rates and requiring by its order the establishment of rates higher than those proposed, on the misconception that it could lawfully require rates to be established from the Brazil and

Linton groups higher than those warranted by the facts, in order to permit the establishment of rates for the transportation of coal from the mines of other operators on other railroads located in more distant groups from the destination territory, lower than would be otherwise warranted by the facts.*

(b) The Commission erred in entering its order, requiring the cancellation of said tariff and requiring the publication of higher rates to Rockford and Beloit and related destination stations for the reason that the order requires the petitioner to assess charges for the transportation of coal from the Indiana mines on its railroad to the involved destinations via its single line of railroad, which are relatively higher, distance considered, than the rates which plaintiff is compelled by Commission order to join with other railroad companies for the movement of coal from Illinois mines to the same destinations.

(c) The Commission erred in entering the order requiring the cancellation of the tariff and requiring the [fol. 549] establishment of higher rates because said order is based upon surmise and conjecture and not upon evidence.

(d) The order of the Commission is arbitrary and unreasonable, not supported by evidence and essential findings, and deprives the plaintiff of its right to meet competition on an equal rate basis.

(e) The petitioner proposed no change in its rate from mines on its railroad in the Brazil and Linton districts to Beloit. The level of those rates was not in issue in this proceeding and the Commission erred and acted on issues beyond the scope of investigation and hearing and without evidence in ordering petitioner to increase those rates.

(f) The Commission erred and acted beyond its powers by requiring the petitioner to remove alleged discrimination and prejudice by increasing its rates and afforded the

* "That low differential necessarily reflects itself in relatively higher rates from the near Indiana groups as well as relatively lower rates from the more distant Indiana group or groups than might otherwise be warranted". (Page 201 of Exhibit "A".)

petitioner no opportunity to remove the alleged discrimination and prejudice by altering other rates.

(g) The Commission acted beyond the scope of its authority and erred in entering its order requiring the cancellation of the tariff schedules and the establishment of higher rates without appropriate and essential findings that the condemned rates were unlawful and in violation of some sections of the Interstate Commerce Act.

(h) Petitioner further avers and charges that the Commission, in denying, as aforesaid, the petitioner's petition for rehearing and reconsideration, acted arbitrarily and unreasonably.

IX

Petitioner further avers that if the order of the Commission, directing the cancellation of the proposed tariff schedules, and requiring the publication of higher rates to destinations in Northern Illinois and Beloit, Wisconsin, is permitted to become effective, petitioner will be irrepa- [fol. 5-10] rably injured and damaged and, unless said order is enjoined and set aside by this Honorable Court, said order will have to be complied with February 8, 1946.

X

Petitioner has no adequate remedy at law.

Wherefore, inasmuch as your petitioner is remediless in the premises at law and relievable only in a court of equity, the petitioner prays as follows:

1. That upon the filing of this petition, a subpoena be issued against the defendant, United States of America, as required by law, and that due and proper service of such subpoena and of this petition be forthwith made by filing a copy thereof in the office of the Secretary of the Interstate Commerce Commission and in the Department of Justice, and that thereby defendant be required, on or before a date specified in such subpoena, to appear herein and answer this petition, but not under oath; answer under oath being hereby expressly waived;

2. That the Court, as soon as practicable, convene a specially constituted court of three judges, as required by 28 U. S. C. A. 47 (38 Stat. 220), to hear petitioner's motion

for a temporary or interlocutory injunction and for final hearing in this proceeding;

3. That pending final hearing of the cause a temporary stay or suspension of said order of July 9, 1945, as subsequently amended, be entered herein restraining, enjoining and suspending the execution, effect and enforcement of said order in so far as it requires petitioner to cancel the proposed tariff schedules and publish new tariff schedules, for not more than sixty days;

4. That upon final hearing of this cause, a permanent injunction be issued, decreeing that said order of the Com-[fol. 5-11] mission, dated July 9, 1945, as aforesaid, is null and void and is set aside, annulled and suspended, in whole or in part, and that its execution, effect and operation be perpetually enjoined and restrained, and that the United States of America be restrained from taking any steps or instituting or prosecuting any proceeding to enforce said order; and

5. That this Court grant to the petitioner such other and further relief as by it may be deemed proper in the premises.

Respectfully submitted,

Bert Beasley, Carson L. Taylor, William L. Hunter, Attorneys for Petitioner.

A. N. Whitlock, M. L. Bluhm, of Counsel.

[fol. 5-12] *Duly sworn to by Walter H. Kuhls. Jurat omitted in printing.*

[fol. 6] (Entry for December 27, 1945, continued)

No. 1076 Civil

And thereupon there was issued out of the office of the Clerk of this Court a writ of summons for the defendant to the United States Marshal.

[fols. 7-8] IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 1072 Civil

DESIGNATION OF JUDGES—Filed December 31, 1945

The assignment of two judges by the undersigned being required under Sec. 380 a, 28 U. S. C. A., I hereby designate the Honorable Evan A. Evans, United States Circuit Judge in and for the Seventh Judicial Circuit, and the Honorable Michael L. Igoe, United States District Judge for the Northern District of Illinois, to sit as judges in the above entitled cause.

(Signed) Evan A. Evans, Senior United States Circuit Judge in and for the Seventh Judicial Circuit.

Chicago, Illinois, December 28, 1945."

[fol. 9] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

No. 1072 Civil

PROOF OF NOTICE—Filed January 3, 1946

To the Honorable Tom C. Clark, Attorney General for the United States of America:

To the Interstate Commerce Commission:

Please Take Notice that the petition in the above entitled cause was filed on the 21st day of December, 1945, in the United States District Court for the Southern District of Indiana, and that the Judge of said Court is convening a specially constituted three judge court as provided for by 28 U. S. C. A. 47 (38 Stat. 220) and has fixed Thursday, the 3rd day of January, 1946, at 2:00 P. M., in the Court Room of the United States District Court for the Southern District of Indiana at Indianapolis, Indiana, as the time and place for the hearing on the prayer of Petitioners for a temporary stay or suspension, for not more than sixty (60) days, of the Order of the Interstate Commerce Commission

entered July 9, 1945, and subsequently amended, in I. & S. Docket No. 5139, as prayed in said petition.

A true copy of the petition filed herein is hereto attached and you may appear at the above mentioned time and place [fol. 10] on the hearing of Petitioners' motion for a temporary stay or suspension of said Order if you see fit to do so.

Dated this 21st day of December, 1945.

Dailey, Davis, Hartsock & Baltzell, Gallagher, Rinaker, Wilkinson & Hall, Attorneys for Petitioners.

Of Counsel: (Sgd.) Earl B. Wilkinson, J. Alfred Moran, Paul Y. Davis, Ernest R. Baltzell.

Received a copy of the above and foregoing notice and a copy of the petition therein referred to this 21st day of December, 1945.

For the Attorney General, (Signed) Donald C. Cook, Executive Assistant to the Attorney General. For the Interstate Commerce Commission, (Signed) W. P. Bartel, Secretary.

[fol. 11] IN UNITED STATES SUPREME COURT

No. 1072 Civil

ORDER ASSIGNING CASE.—January 3, 1946

This cause having heretofore been assigned for hearing on the application of the petitioners for an interlocutory injunction and temporary stay restraining, enjoining and suspending the execution and enforcement of an order of the Interstate Commerce Commission entered July 9, 1945 to become effective November 16, 1945 upon notice as therein specified and subsequently modified to become effective February 8, 1946 upon like notice; and the Court being advised by counsel that on December 29, 1945 said Commission entered its order further modifying said order of July 9, 1945 so that it will become effective April 8, 1946 in lieu of February 8, 1946 upon like notice; and it appearing to the Court that since such order of December 29, 1945 final hearing can be had prior to April 8, 1946;

It Is Ordered That the hearing upon the petitioners' application for an interlocutory injunction and temporary stay heretofore assigned and set for January 3, 1946, be and the same hereby is, continued to the day of final hearing herein and that said final hearing shall be had on March 25, 1946 at the hour of 10:00 o'clock, A. M., in the court room of the United States District Court for the Southern District of Indiana, Indianapolis Division, at Indianapolis, Indiana, at which time the Court will hear any and all matters that may properly be presented for determination in this action.

It Is Further Ordered That the Clerk of this Court shall immediately mail copies of this order to the Interstate [fol. 12] Commerce Commission, the Attorney General of the United States, the United States District Attorney for the Southern District of Indiana, and the attorneys for the petitioners and intervenors herein.

[fols. 13-14] IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 1076 Civil

DESIGNATION OF JUDGES—Filed January 3, 1946

The assignment of two judges by the undersigned being required under Sec. 380 a, 28 U. S. C. A., I hereby designate the Honorable Evan A. Evans, United States Circuit Judge in and for the Seventh Judicial Circuit, and the Honorable Michael L. Igoe, United States District Judge for the Northern District of Illinois, to sit as judges in the above entitled cause.

(Signed) Evan A. Evans, Senior United States Circuit Judge in and for the Seventh Judicial Circuit."

[fol. 15] IN UNITED STATES DISTRICT COURT

Civil No. 1076

[Title omitted]

PROOF OF NOTICE—Filed January 3, 1946

To the Honorable Tom Clark, Attorney General for the United States of America: to the Interstate Commerce Commission: and Hon. B. Howard Caughran, U. S. Dist. Attorney, Indianapolis, Ind.:

Please take notice that petitioner's petition in the above-mentioned case was filed on this day in the District Court of the United States, for the Southern District of Indiana, Indianapolis Division, and that the judge of said court hearing equity cases is convening a specially constituted three-judge court as provided for by the Urgent Deficiency Appropriations Act of October 22, 1913, 38 Statutes at Large 219, and has fixed Thursday, the 3rd day of January, 1946, at 2:00 P. M., at the United States Court House in Indianapolis, Indiana, as the time and place for the hearing on the prayer of petitioner for an interlocutory injunction as prayed for in petitioner's petition.

A true copy of the petition filed herein is hereto attached, and you may appear at the above-mentioned time and place on the hearing of petitioner's motion for an interlocutory injunction if you see fit to do so.

Dated this 27th day of December, 1945.

(S.) Bert Beasley, Carson L. Taylor, William L. Hunter, Attorneys for Petitioner.

[fol. 16] A. N. Whitlock and M. L. Bluhm, of Counsel.

Received a copy of the above and foregoing notice and of the petition therein referred to this 27 day of December, A. D., 1945.

For the Attorney General: (S.) B. Howard Caughran, U. S. Atty., for Interstate Commerce Commission.

A. N. Whitlock and M. L. Bluhm, of Counsel.

Received a copy of the above and foregoing notice and of the petition therein referred to this 28th day of December, A. D., 1945.

For the Attorney General: (S.) Nelson L. Thomas, Attorney, for Interstate Commerce Commission.

[fol. 17] IN UNITED STATES DISTRICT COURT

No. 1076 Civil

ORDER ASSIGNING CASE—January 3, 1946

This cause having heretofore been assigned for hearing on the application of the petitioner for an interlocutory injunction restraining and suspending enforcement of the order of the Interstate Commerce Commission, as amended, mentioned in the petition filed herein; and the Court being advised by counsel that on December 29, 1945 said Commission entered its order so that it will become effective April 8, 1946; and it appearing to the Court that since such order of December 29, 1945 final hearing can be had prior to April 8, 1946.

It Is Ordered That the hearing upon the petitioner's application for interlocutory injunction and restraining order heretofore assigned and set for January , 1946, be, and the same hereby is, continued to the day of final hearing herein and that said final hearing shall be had on March 25, 1946 at the hour of 10:00 o'clock A. M. in the court room of the United States District Court for the Southern District of Indiana, Indianapolis Division, at Indianapolis, Indiana, at which time the Court will hear any and all matters that may properly be presented for determination in this cause.

It Is Further Ordered That the Clerk of this Court mail copies of this order to the Interstate Commerce Commission, the Attorney General of the United States, the United States District Attorney for the Southern District of Indiana, and the attorneys for the petitioner and interveners herein.

[fols. 18-19] IN UNITED STATES DISTRICT COURT

No. 1072 Civil—No. 1076 Civil

ORDER CONSOLIDATING CAUSES—January 3, 1946

Come now the parties in the above entitled causes of action by their respective attorneys and it is.

Ordered by the Court that the above causes be, and are, hereby consolidated for all purposes.

[fol. 20] IN UNITED STATES DISTRICT COURT

Civil No. 1072

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA—Filed February 18, 1946

Now comes the defendant, United States of America, and for its answer to the petition or complaint in the above-entitled cause, answers and says:

1. Defendant admits the allegations of paragraph I of the complaint.

2. Defendant admits the allegations of paragraphs II and IV of the complaint, except that defendant alleges that the proceedings before the Interstate Commerce Commission, orders, records, pleadings, rate schedules and tariffs therein referred to, are in writing and speak for themselves, and neither defendant nor the Commission is bound by plaintiffs' characterization thereof.

3. Defendant admits the allegations of paragraph III of the complaint, except that defendant objects to the consideration by this Court of the record in I. & S. Docket No. 5139 and Docket No. 28881, therein referred to, unless the said record is duly introduced in evidence before this Court at the trial of the cause; and except that defendant objects [fol. 21] to consideration of Exhibits A and F to the complaint, therein referred to, except as evidence of the fact, which is admitted, that said pleadings were filed with the Commission, and that the Commission denied plaintiffs' petition for reconsideration, and plaintiffs' suit is therefore not premature under the terms of Section 17(9) of the Interstate Commerce Act (49 U. S. C. 17(9)).

4. Defendant denies the allegations of paragraphs V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, and XVII of the complaint.

Wherefore, defendant prays that the relief prayed for by plaintiffs be denied and that the complaint be dismissed, plaintiffs to pay the costs.

(Signed) Edward Dumbauld, Special Assistant to the Attorney General, Department of Justice, Washington, D. C.

Wendell Berge, Assistant Attorney General; B. Howard Caughran, United States Attorney,

[fols. 22-23] I certify that copies of the foregoing answer were this day mailed to the following persons:

Daily, Davis, Hartsock & Baltzell, 1100 Hume-Mansur Building, Indianapolis 4, Indiana.

Gallagher, Rinaker, Wilkinson & Hall, 231 South La Salle Street, Chicago 4, Illinois.

Erle J. Zoll, Jr., Esq., 135 East Eleventh Place, Chicago 5, Illinois.

J. E. Marks, Esq., 145 East High Street, Lexington 4, Kentucky.

Nelson Thomas, Esq., Interstate Commerce Commission, Washington 25, D. C.

This 15th day of February, 1946.

(Signed) Edward Dumbauld, Special Assistant to the Attorney General.

[fol. 24] In United States District Court

Civil Action No. 1072

[Title omitted]

Motion for Leave to Intervene as a Defendant—Filed February 19, 1946

Comes now Kentucky Coal Agency, Incorporated, Applicant for Intervention, by its Attorney, J. E. Marks, and, pursuant to Section 45a of Title 28, of the United States (Sections 212 and 213 of the Judicial Code), moves the Court to enter an order permitting it to intervene as a defendant in the above-entitled proceeding, and to file in-

stanter its petition in intervention, copy of which is attached hereto.

The grounds upon which Applicant relies in support of this motion are set forth in said petition.

(Signed) J. E. Marks, 145 East High Street, Lexington 4, Kentucky, Attorney for Applicant for Intervention.

[fol. 25] IN UNITED STATES DISTRICT COURT

No. 1072 Civil

ORDER GRANTING LEAVE TO INTERVENE—February 19, 1946

This cause coming on to be heard on the motion of the above-named Applicant for leave to intervene as a party defendant, and the Court having considered said motion and the petition tendered therewith, and it appearing to the Court that said Applicant should be permitted to intervene, as prayed, and the Court being fully advised in the premises,

It Is Ordered, that Kentucky Coal Agency, Incorporated, be, and it hereby is, granted leave to intervene in the above-entitled proceeding as a party defendant and to file instanter its petition in intervention therein, and

It Is Further Ordered, that the attorney for Kentucky Coal Agency, Incorporated, shall give notice of the entry of this order, and at the time of giving such notice shall serve by personal delivery, or by registered mail, true and correct copies of this order and of the motion and petition in intervention on the Attorney General of the United States, the Interstate Commerce Commission, the United States District Attorney for the Southern District of Indiana, and the attorneys for the petitioners and intervenors herein.

[fol. 26] IN UNITED STATES DISTRICT COURT

Civil Action No. 1072

[Title omitted]

PETITION FOR LEAVE TO INTERVENE AS A DEFENDANT.—Filed February 19, 1946

Comes now Kentucky Coal Agency, Incorporated, Applicant for Intervention, and for grounds of its proposed intervention as a defendant says:

I.

That the above-entitled proceeding was commenced in this Court by the Ayrshire Collieries Corporation, a corporation, et al., original petitioners, by the filing of a petition, on December 21, 1945, seeking to enjoin, set aside, annul and suspend a certain order of the Interstate Commerce Commission dated July 9, 1945, and subsequently amended, entered in a proceeding entitled "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois." By said order, as amended, the respondent railroads are required to establish, on or before February 8, 1946, certain revised rates on coal, carloads, from mines in the midwestern coal field, including mines in western Kentucky, to destinations in northern Illinois and to Beloit, Wisconsin.

[fol. 27] II

That Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That Applicant, Kentucky Coal Agency, Incorporated, is a Kentucky corporation with its principal office and place of business at Madisonville, Kentucky, and that its stockholders own and operate coal mines in western Kentucky,

in what is known as the western Kentucky coal field, and that said mines are served by the Illinois Central Railroad or Louisville and Nashville Railroad, or both of said railroads.

IV

That Applicant was authorized by the Interstate Commerce Commission to intervene in its "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois," and that it did intervene and actively participate in said proceeding. The specific findings respecting the rates from the western Kentucky mines are set forth in the report of the Commission, dated July 9, 1945, as will be seen by reference to pages 100, 101, 111 (No. 14), and 113 (No. 4), of the original petition herein.

V

That Applicant's stockholders ship coal from their mines in western Kentucky to the destinations embraced in said order of the Interstate Commerce Commission, and that they will be denied the benefit of the rates and rate relationships prescribed by the Interstate Commerce Commission for the future, and will be irreparably damaged, if said order is enjoined, set aside, annulled or suspended, as sought by petitioners.

[fols. 28-29] Wherefore, Applicant, Kentucky Coal Agency, Incorporated, in accordance with the provisions of Section 45a of Title 28, of the United States Code, prays the Court for leave to intervene as a party Defendant in opposition to the petition filed by Ayrshire Collieries Corporation, a corporation, et al., in the above-entitled proceeding.

(Signed) J. E. Marks, 145 East High Street, Lexington 4, Kentucky, Attorney for Applicant for Intervention.

Duly sworn to by H. C. Moore. Jurat omitted in printing.

[fol. 30] IN UNITED STATES DISTRICT COURT

Civil Action No. 1072

[Title omitted]

MOTION FOR LEAVE TO INTERVENE AS DEFENDANT—Filed February 19, 1946

Comes now Railroad Commission of Kentucky, Applicant for Intervention, by its Attorneys, and pursuant to Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code), moves the Court to enter an order permitting it to intervene as a defendant in the above-entitled proceeding, and to file instanter its petition in intervention, copy of which is attached hereto.

[fol. 31] The grounds upon which Applicant relies in support of this motion are set forth in said petition.

(Signed) Eldon S. Dummit, Attorney General of Kentucky, Frankfort, Kentucky; (Signed) M. B. Holifield, Assistant Attorney General of Kentucky, Frankfort, Kentucky, Attorneys for Applicant for Intervention.

J. E. Marks, 145 East High Street, Lexington 4, Kentucky, of Counsel.

[fol. 32] IN UNITED STATES DISTRICT COURT

No. 1072 Civil

ORDER GRANTING LEAVE TO INTERVENE—February 19, 1946

This cause coming on to be heard on the motion of the above-named Applicant for leave to intervene as a party defendant, and the Court having considered said motion and the petition tendered therewith, and it appearing to the Court that said Applicant should be permitted to intervene, as prayed, and the Court being fully advised in the premises,

It Is Ordered, That Railroad Commission of Kentucky, be, and it hereby is, granted leave to intervene in the above-entitled proceeding as a party defendant and to file instanter its petition in intervention therein, and

It Is Further Ordered, that the attorneys for Applicant shall give notice of the entry of this order, and at the time of giving such notice shall serve by personal delivery, or by registered mail, true and correct copies of this order and of the motion and petition in intervention on the Attorney General of the United States, the Interstate Commerce Commission, the United States District Attorney for the Southern District of Indiana, and the attorneys for the plaintiffs and intervenors herein.

[fol. 33] IN UNITED STATES DISTRICT COURT

Civil Action No. 1072

[Title omitted]

PETITION FOR LEAVE TO INTERVENE AS A DEFENDANT—Filed February 19, 1946

Comes now Railroad Commission of Kentucky, Applicant for Intervention, and for grounds of its proposed intervention as a defendant says:

I

That the above-entitled proceeding was commenced in this Court by the Ayrshire Collieries Corporation, a corporation, et al., original petitioners, by the filing of a petition on December 21, 1945, seeking to enjoin, set aside, annul and suspend a certain order of the Interstate Commerce Commission, dated July 9, 1945, and subsequently amended, entered in a proceeding entitled "I. & S. Docket No. 5139, Coal to [fol. 34] Beloit, Wis. and Northern Illinois." By said order, as amended, the respondent railroads are required to establish, on or before February 8, 1946, certain revised rates on coal, carloads, from mines in the midwestern coal field, including mines in western Kentucky, to destinations in northern Illinois and to Beloit, Wisconsin.

II

That Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the

Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That Applicant, Railroad Commission of Kentucky, is a body politic, created by the Constitution of the Commonwealth of Kentucky, and is represented in this proceeding by Frank L. McCarthy, Jack E. Fisher, and Clay M. Bishop, its duly elected, qualified and acting members, who file this petition in its behalf and in behalf of the citizens of Kentucky, and by their authority as such members. Under the laws of the Commonwealth of Kentucky (Section 276.190 of the Kentucky Revised Statutes, 1944), Applicant, Railroad Commission of Kentucky, is authorized and directed to examine the interstate freight rates charged by railroads between points in Kentucky, on the one hand, and points in other states, on the other hand, and to seek relief from the Interstate Commerce Commission, if such rates are found excessive, unreasonable or discriminatory.

Applicant has its principal office and place of business at Frankfort, Kentucky.

[fol. 35]

IV

That Applicant was authorized by the Interstate Commerce Commission to intervene in its "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois," and that it did intervene and actively participate in said proceeding. The specific findings respecting the rates from the western Kentucky mines are set forth in the report of the Commission, dated July 9, 1945, as will be seen by reference to pages 100, 101, 111 (No. 14), and 113 (No. 4), of the original petition herein.

V

That the mining of bituminous coal is one of the principal industries of Kentucky, and that the success of the citizens of Kentucky engaged in this industry, including mine owners and their employees, and of numerous other citizens of the state who are directly or indirectly connected with the coal industry, depends in a large measure upon the establishment and maintenance of reasonable and other-

wise lawful rates on coal from producing points in Kentucky to consuming points in other states.

VI

That the operators of coal mines in western Kentucky market, or endeavor to market, a portion of their product at the destinations embraced in said order of the Interstate Commerce Commission, and that they will be denied the benefit of the rates and rate relationships prescribed by the Interstate Commerce Commission for the future, and that they and other citizens of Kentucky will be irreparably damaged, if said order is enjoined, set aside, annulled or suspended, as sought by petitioners.

Wherefore, Applicant, Railroad Commission of Kentucky, in accordance with the provisions of Section 45a of Title 28 of the United States Code, prays the Court for leave to intervene as a party defendant in opposition to the petition [fols. 36-37] filed by Ayrshire Collieries Corporation, a corporation, et al., in the above-entitled proceeding.

(Signed) Eldon S. Dummit, Attorney General of Kentucky, Frankfort, Kentucky; M. B. Holifield, Assistant Attorney General of Kentucky, Frankfort, Kentucky, Attorneys for Applicant for Intervention.

(Signed) J. E. Marks, 145 East High Street, Lexington 4, Kentucky, of Counsel.

Duly sworn to by Frank L. McCarthy. Jurat omitted in printing.

[fol. 38] IN UNITED STATES DISTRICT COURT

Civil Action No. 1076

[Title omitted]

MOTION FOR LEAVE TO INTERVENE AS A DEFENDANT—Filed February 19, 1946

Comes now Kentucky Coal Agency, Incorporated, Applicant for Intervention, by its Attorney, J. E. Marks, and, pursuant to Section 45a of Title 28, of the United States

Code (Sections 212 and 213 of the Judicial Code), moves the Court to enter an order permitting it to intervene as a defendant in the above-entitled proceeding, and to file instanter its petition in intervention, copy of which is attached hereto.

The grounds upon which Applicant relies in support of this motion are set forth in said petition.

(Signed) J. E. Marks, 145 East High Street, Lexington 4, Kentucky, Attorney for Applicant for Intervention.

[fol. 39] IN UNITED STATES DISTRICT COURT

No. 1076 Civil

ORDER GRANTING LEAVE TO INTERVENE—February 19, 1946

This cause coming on to be heard on the motion of the above-named Applicant for leave to intervene as a party defendant, and the Court having considered said motion and the petition tendered therewith, and it appearing to the Court that said Applicant should be permitted to intervene, as prayed, and the Court being fully advised in the premises,

It Is Ordered, That Kentucky Coal Agency, Incorporated, be and it hereby is, granted leave to intervene in the above-entitled proceeding as a party defendant and to file instanter its petition in intervention therein, and

It Is Further Ordered, that the attorneys for Applicant shall give notice of the entry of this order, and at the time of giving such notice shall serve by personal delivery, or by registered mail, true and correct copies of this order and of the motion and petition in intervention on the Attorney General of the United States, the Interstate Commerce Commission, the United States District Attorney for the Southern District of Indiana, and the attorneys for the plaintiff and intervenors herein.

(Signed) Evan A. Evans, United States District Judge.

[fol. 40] IN UNITED STATES DISTRICT COURT

Civil Action No. 1076

[Title omitted]

PETITION FOR LEAVE TO INTERVENE AS A DEFENDANT—Filed February 19, 1946

Comes now Kentucky Coal Agency, Incorporated, Applicant for Intervention, and for grounds of its proposed intervention as a defendant says:

I

That the above-entitled proceeding was commenced in this Court by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, original petitioner, by the filing of a petition, on December 27, 1945, seeking to enjoin, set aside, annul and suspend a certain order of the Interstate Commerce Commission dated July 9, 1945, and subsequently amended, entered in a proceeding entitled "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois." By said order, as amended, the respondent railroads are re-[fol. 41] quired to establish, on or before February 8, 1946, certain revised rates on coal, carloads, from mines in the midwestern coal field, including mines in western Kentucky, to destinations in northern Illinois and to Beloit, Wisconsin.

II

That Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That Applicant, Kentucky Coal Agency, Incorporated, is a Kentucky corporation with its principal office and place of business at Madisonville, Kentucky, and that its stockholders own and operate coal mines in western Kentucky, in what is known as the western Kentucky coal field, and

that said mines are served by the Illinois Central Railroad or Louisville and Nashville Railroad, or both of said railroads.

IV

That Applicant was authorized by the Interstate Commerce Commission to intervene in its "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois," and that it did intervene and actively participate in said proceeding. The specific findings respecting the rates from the western Kentucky mines are set forth in the report of the Commission, dated July 9, 1945, as will be seen by reference to pages 100, 101, 111 (No. 14), and 113 (No. 4), of the original petition in Civil Action No. 1072.

V

That Applicant's stockholders ship coal from their mines in western Kentucky to the destinations embraced in said [fols. 42-43] order of the Interstate Commission, and that they will be denied the benefit of the rates and rate relationships prescribed by the Interstate Commerce Commission for the future, and will be irreparably damaged, if said order is enjoined, set aside, annulled or suspended, as sought by petitioners.

Wherefore, Applicant, Kentucky Coal Agency, Incorporated, in accordance with the provisions of Section 45a of Title 28, of the United States Code, prays the Court for leave to intervene as a party Defendant in opposition to the petition filed by Chicago, Milwaukee, St. Paul and Pacific Railroad Company in the above-entitled proceeding.

(Signed) J. E. Marks, 145 East High Street, Lexington 4, Kentucky, Attorney for Applicant for Intervention.

Duly sworn to by H. C. Moore. Jurat omitted in printing.

[fol. 44] IN UNITED STATES DISTRICT COURT

Civil Action No. 1076

[Title omitted]

MOTION FOR LEAVE TO INTERVENE AS A DEFENDANT—Filed February 19, 1946

Comes now Railroad Commission of Kentucky, Applicant for Intervention, by its Attorneys, and pursuant to Section 45a of Title 28, of the United States Code, (Sections 212 and 213 of the Judicial Code), moves the Court to enter an order permitting it to intervene as a defendant in the above-entitled proceeding, and to file instanter its petition in intervention, copy of which is attached hereto.

[fol. 45] The grounds upon which Applicant relies in support of this motion are set forth in said petition.

(Signed) Eldon S. Dummit, Attorney General of Kentucky, Frankfort, Kentucky; (Signed) M. B. Holifield, Assistant Attorney General of Kentucky, Attorneys for Applicant for Intervention.

(Signed) J. E. Marks, 145 East High Street, Lexington 4, Kentucky, Of Counsel.

[fol. 46] IN UNITED STATES DISTRICT COURT

No. 1076. Civil

ORDER GRANTING LEAVE TO INTERVENE—February 19, 1946

This cause coming on to be heard on the motion of the above-named Applicant for leave to intervene as a party defendant, and the Court having considered said motion and the petition tendered therewith, and it appearing to the Court that said Applicant should be permitted to intervene, as prayed, and the Court being fully advised in the premises,

It Is Ordered, That Railroad Commission of Kentucky, be, and it hereby is, granted leave to intervene in the above-entitled proceeding as a party defendant and to file instanter its petition in intervention therein, and

It Is Further Ordered, that the attorneys for Applicant shall give notice of the entry of this order, and at the time

of giving such notice shall serve by personal delivery, or by registered mail, true and correct copies of this order and of the motion and petition in intervention on the Attorney General of the United States, the Interstate Commerce Commission, the United States District Attorney for the Southern District of Indiana, and the attorneys for the plaintiff and intervenors herein.

[fol. 47] IN UNITED STATES DISTRICT COURT

Civil Action. No. 1076

[Title omitted]

PETITION FOR LEAVE TO INTERVENE AS A DEFENDANT—Filed February 19, 1946

Comes now Railroad Commission of Kentucky, Applicant for Intervention, and for grounds of its proposed intervention as a defendant says:

I

That the above-entitled proceeding was commenced in this Court by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, original petitioner, by the filing of a petition, on December 27, 1945, seeking to enjoin, set aside, annul and suspend a certain order of the Interstate Commerce Commission dated July 9, 1945, and subsequently amended, entered in a proceeding entitled "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois." By [fol. 48] said order, as amended, the respondent railroads are required to establish, on or before February 8, 1946, certain revised rates on coal, carloads, from mines in the midwestern coal field, including mines in western Kentucky, to destinations in northern Illinois and to Beloit, Wisconsin.

II

That Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of

right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That Applicant, Railroad Commission of Kentucky, is a body politic, created by the Constitution of the Commonwealth of Kentucky, and is represented in this proceeding by Frank L. McCarthy, Jack E. Fisher, and Clay M. Bishop, its duly elected, qualified and acting members, who file this petition in its behalf and in behalf of the citizens of Kentucky, and by their authority as such members. Under the laws of the Commonwealth of Kentucky (Section 276.190 of the Kentucky Revised Statutes, 1944), Applicant, Railroad Commission of Kentucky, is authorized and directed to examine the interstate freight rates charged by railroads between points in Kentucky, on the one hand, and points in other states, on the other hand, and to seek relief from the Interstate Commerce Commission, if such rates are found excessive, unreasonable or discriminatory.

Applicant has its principal office and place of business at Frankfort, Kentucky.

[fol. 49]

IV

That Applicant was authorized by the Interstate Commerce Commission to intervene in its "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois," and that it did intervene and actively participate in said proceeding. The specific findings respecting the rates from the western Kentucky mines are set forth in the report of the Commission, dated July 9, 1945, as will be seen by reference to pages 100, 101, 111 (No. 14), and 113 (No. 4), of the original petition herein.

V

That the mining of bituminous coal is one of the principal industries of Kentucky, and that the success of the citizens of Kentucky engaged in this industry, including mine owners and their employees, and of numerous other citizens of the state who are directly or indirectly connected with the coal industry, depends in a large measure upon the establishment and maintenance of reasonable and otherwise lawful rates on coal from producing points in Kentucky to consuming points in other states.

VI

That the operators of coal mines in western Kentucky market, or endeavor to market, a portion of their product at the destinations embraced in said order of the Interstate Commerce Commission, and that they will be denied the benefit of the rates and rate relationships prescribed by the Interstate Commerce Commission for the future, and that they and other citizens of Kentucky will be irreparably damaged, if said order is enjoined, set aside, annulled or suspended, as sought by petitioner.

Wherefore, Applicant, Railroad Commission of Kentucky, in accordance with the provisions of Section 45a of Title 28 of the United States Code, prays the Court for leave to intervene as a party defendant in opposition to [fols. 50-51] the petition filed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in the above-entitled proceeding.

(Signed) Eldon S. Dummit, Attorney General of Kentucky, Frankfort, Kentucky. (Signed) M. B. Holifield, Assistant Attorney General of Kentucky, Frankfort, Kentucky, Attorneys for Applicant for Intervention.

(Signed) J. E. Marks, 145 East High Street, Lexington 4, Kentucky, Of Counsel.

Duly sworn to by Frank L. McCarthy. Jurat omitted in printing.

[fol. 52] In United States District Court

Civil Action. No. 1072.

[Title omitted]

Motion for Leave to Intervene as Defendants—Filed February 26, 1946

Come now:

The Alton Railroad Company (Henry A. Gardner, Trustee),

The Atchison, Topeka and Santa Fe Railway Company,

Chicago and Eastern Illinois Railway Company,
Chicago & Illinois Midland Railway Company,
Chicago and North Western Railway Company,
Chicago, Burlington & Quincy Railroad Company,
The Chicago, Rock Island and Pacific Railway Company (Joseph B. Fleming and Aaron Colnon, Trustees),
Chicago Great Western Railway Company,
Illinois Central Railroad Company,
Louisville and Nashville Railroad Company, and
Missouri Pacific Railroad Company (Guy A. Thompson, Trustee),

applicants for intervention, and, pursuant to Section 45a of Title 28, of the United States Code, (sections 212 and 213 of the Judicial Code), hereby move the Court to enter an [fol. 53] order permitting them to intervene as defendants in the above-entitled proceeding, and to file instanter their petition in intervention, a copy of which is attached hereto.

The grounds upon which applicants rely in support of this motion are set forth in said petition.

(Signed) Erle J. Zoll, Jr., 135 East Eleventh Place, Chicago 5, Illinois, Attorney for Applicants for Intervention.

Fesler, Elam & Fauvre, 129 East Market Street, Indianapolis 4, Indiana, Resident Attorneys for Applicants for Intervention.

[fol. 54] IN UNITED STATES DISTRICT COURT

Civil Action No. 1076

[Title omitted]

MOTION FOR LEAVE TO INTERVENE AS DEFENDANTS—Filed February 26, 1946

Come now The Alton Railroad Company (Henry A. Gardner, Trustee), The Atchison, Topeka and Santa Fe Railway Company, Chicago and Eastern Illinois Railway Company, Chicago & Illinois Midland Railway Company, Chicago and North Western Railway Company, Chicago, Burlington & Quincy Railroad Company, The Chicago, Rock Island and

Pacific Railway Company (Joseph B. Fleming and Aaron Colnon, Trustees), Chicago Great Western Railway Company, Illinois Central Railroad Company, Louisville and Nashville Railroad Company, and Missouri Pacific Railroad Company (Guy A. Thompson, Trustee), applicants for intervention, and pursuant to Section 45a of Title 28, of the United States Code, (Sections 212 and 213 of the Judicial Code), hereby move the Court to enter an order [fol. 55] permitting them to intervene as defendants in the above-entitled proceeding, and to file instanter their petition in intervention, a copy of which is attached hereto.

The grounds upon which applicants rely in support of this motion are set forth in said petition.

(Signed) Erle J. Zoll, Jr., 135 East Eleventh Place, Chicago 5, Illinois, Attorney for Applicants for Intervention.

Fesler, Elam & Fauvre, 129 East Market Street, Indianapolis 4, Indiana, Resident Attorneys for Applicants for Intervention.

[fol. 56] In United States District Court

No. 1072 Civil—No. 1076 Civil

Order Granting Leave to Intervene—February 26, 1946

This cause coming on to be heard on the motion of the above-named applicants for leave to intervene as parties defendant, and the Court having considered said motion and the petition tendered therewith, and it appearing to the Court that said applicants should be permitted to intervene, as prayed, and the Court being fully advised in the premises,

It is ordered, that The Alton Railroad Company (Henry A. Gardner, Trustee), The Atchison, Topeka and Santa Fe Railway Company, Chicago and Eastern Illinois Railway Company, Chicago & Illinois Midland Railway Company, Chicago and North Western Railway Company, Chicago, Burlington & Quincy Railroad Company, The Chicago, Rock Island and Pacific Railway Company (Joseph B. Fleming and Aaron Colnon, Trustees), Chicago Great Western Railway Company, Illinois Central Railroad Company, Louis-

ville and Nashville Railroad Company, and Missouri Pacific Railroad Company (Guy A. Thompson, Trustee), be, and they hereby are, granted leave to intervene in the above-entitled proceeding as parties defendant and to file instanter their petition in intervention, therein, and it is further ordered, that counsel for the applicants above named shall give notice of the entry of this order, and at the time of giving such notice shall serve by personal delivery, or by registered mail, true and correct copies of this order and of the motion and petition in intervention on the Attorney General of the United States, the Interstate Commerce Com-[fol. 57] mission, the United States District Attorney for the Southern District of Indiana, and the attorneys for the petitioners and interveners herein.

[fol. 58] IN UNITED STATES DISTRICT COURT

Civil Action No. 1072

[Title omitted]

PETITION FOR LEAVE TO INTERVENE AS DEFENDANTS—Filed February 26, 1946

Come now The Alton Railroad Company (Henry A. Gardner, Trustee), The Atchison, Topeka and Santa Fe Railway Company, Chicago and Eastern Illinois Railway Company, Chicago & Illinois Midland Railway Company, Chicago and North Western Railway Company, Chicago, Burlington & Quincy Railroad Company, The Chicago, Rock Island and Pacific Railway Company (Joseph B. Fleming and Aaron Colnon, Trustees), Chicago Great Western Railway Company, Illinois Central Railroad Company, Louisville and Nashville Railroad Company, and Missouri Pacific Railroad Company (Guy A. Thompson, Trustee), applicants for intervention, and for grounds of their proposed intervention as defendants say:

[fol. 59]

I

That the above-entitled proceeding was commenced in this Court by the Ayrshire Collieries Corporation, a corporation, et al., original petitioners, by the filing of a petition on December 21, 1945, seeking to enjoin, set aside,

annul and suspend a certain order of the Interstate Commerce Commission dated July 9, 1945, and subsequently amended, entered in a proceeding entitled "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois." By said order, as amended, the respondent railroads are required to establish, on or before April 8, 1946, certain revised rates on coal, carloads, from mines in the midwestern coal field to destinations in northern Illinons and to Beloit, Wisconsin.

II

That Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That applicants are each common carriers by railroad subject to the Interstate Commerce Act, as amended, and that each of them was a party in interest to the proceeding before the Interstate Commerce Commission, I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois, the order of the Commission entered in that proceeding July 30, 1942, naming each of the aforesaid applicants as respondents to such proceeding.

[fol. 60] Wherefore, applicants in accordance with the provisions of Section 45a of Title 28 of the United States Code, pray the Court for leave to intervene as parties defendant in opposition to the petition filed by Ayrshire Collieries Corporation, a corporation, et al., in the above-entitled proceeding.

(Signed) Erle J. Zoll, Jr., 135 East Eleventh Place, Chicago 5, Illinois, Attorney for Applicants for Intervention.

Fesler, Elam & Fauvre, 129 East Market Street, Indianapolis 4, Indiana, Resident Attorneys for Applicants for Intervention.

[fol. 61] IN UNITED STATES DISTRICT COURT

Civil Action No. 1076

[Title omitted]

PETITION FOR LEAVE TO INTERVENE AS DEFENDANTS—Filed February 26, 1946

Come now

The Alton Railroad Company (Henry A. Gardner, Trustee),
The Atchison, Topeka and Santa Fe Railway Company,
Chicago and Eastern Illinois Railway Company,
Chicago & Illinois Midland Railway Company,
Chicago and North Western Railway Company,
Chicago, Burlington & Quincy Railroad Company,
The Chicago, Rock Island and Pacific Railway Company (Joseph B. Fleming and Aaron Colnon, Trustees),
Chicago Great Western Railway Company,
Illinois Central Railroad Company,
Louisville and Nashville Railroad Company, and
Missouri Pacific Railroad Company (Guy A. Thompson, Trustee),

applicants for intervention, and for grounds of their proposed intervention as defendants say:

[fol. 62]

I

That the above-entitled proceeding was commenced in this Court by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, original petitioner, by the filing of a petition on December 27, 1945, seeking to enjoin, set aside, annul and suspend a certain order of the Interstate Commerce Commission dated July 9, 1945, and subsequently amended, entered in a proceeding entitled "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois." By said order, as amended, the respondent railroads are required to establish, on or before April 8, 1946, certain revised rates on coal, carloads, from mines in the midwestern coal field to destinations in northern Illinois and to Beloit, Wisconsin.

II

That Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in

part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That applicants are each common carriers by railroad subject to the Interstate Commerce Act, as amended, and that each of them was a party in interest to the proceeding before the Interstate Commerce Commission, I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois, the order of the Commission entered in that proceeding July 30, 1942, naming each of the aforesaid applicants as respondents to such proceeding.

[fols. 63-64] Wherefore, applicants in accordance with the provisions of Section 45a of Title 28 of the United States Code, pray the Court for leave to intervene as parties defendant in opposition to the petition filed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in the above-entitled proceeding.

(Signed) Erle J. Zoll, Jr., 135 East Eleventh Place, Chicago 5, Illinois, Attorney for Applicants for Intervention.

Fesler, Elam & Fauvre, 129 East Market Street, Indianapolis 4, Indiana, Resident Attorneys for Applicants for Intervention.

[fol. 65] IN UNITED STATES DISTRICT COURT

Civil No. 1076

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA—Filed February 26, 1946

Now comes the defendant, the United States of America, and for its answer to the petition or complaint in the above-entitled cause, answers and says:

1. Defendant admits the allegations of paragraphs I, II, and III of the complaint.

2. Defendant admits the allegations of paragraph IV of the complaint, except that defendant alleges that the tariffs and orders of the Interstate Commerce Commission referred to therein are in writing and speak for themselves, and neither defendant nor the said Commission is bound by plaintiff's characterization thereof.

3. Defendant is without knowledge sufficient to form a belief with respect to the allegations of paragraphs V and VI of the complaint.

4. Defendant admits the allegations of paragraph VII of the complaint, except that defendant objects to the consideration of plaintiff's petition to the Commission for reconsideration (Exhibit C to complaint) except as evidence of the fact, which is admitted, that such petition was duly filed and was denied by the Commission, and that [fol. 66] plaintiff's suit is therefore not premature under the provisions of Section 17(9) of the Interstate Commerce Act as amended (49 U. S. C. 17(9)).

5. Defendant denies the allegations of paragraphs VIII, IX, and X of the complaint.

Wherefore, defendant prays that the relief prayed for by plaintiff be denied and that the complaint be dismissed, plaintiff to pay the costs.

(Signed) Edward Dumbauld, Special Assistant to the Attorney General, Department of Justice, Washington, D. C.

Wendell Berge, Assistant Attorney General; B. Howard Caughran, United States Attorney.

[fol. 67] I certify that copies of the foregoing answer were this day mailed to the following persons:

Bert Beasley, Esq., 108 East Washington Building, Indianapolis, Indiana;

Carson L. Taylor, Esq., William L. Hunter, Esq., 888 Union Station Building, Chicago 6, Illinois;

Nelson Thomas, Esq., Interstate Commerce Commission, Washington 25, D. C.;

Erle J. Zoll, Jr., Esq., 135 East Eleventh Place, Chicago 5, Illinois;

J. E. Marks, Esq., 145 East High Street, Lexington 4, Kentucky.

(Signed) Edward Dumbauld, Special Assistant to the Attorney General.

This 15th day of February, 1946.

[fol. 68] IN UNITED STATES DISTRICT COURT

No. 1072 Civil—No. 1076 Civil

ORDER GRANTING LEAVE TO INTERVENE—March 4, 1946

The intervention of the Interstate Commerce Commission as a party defendant herein being submitted to the Court, and the Court being fully advised in the premises,

It is ordered that the Interstate Commerce Commission be, and it is granted leave to intervene in the above entitled proceedings as a party defendant and to file its answer tendered with its intervention.

[fol. 69] IN UNITED STATES DISTRICT COURT

Civil Action No. 1072

[Title omitted]

INTERVENTION OF THE INTERSTATE COMMERCE COMMISSION

To the Honorable Judges of the Aforesaid Court:

This being a suit to set aside an order of the Interstate Commerce Commission, the undersigned, in accordance with the provisions of Section 212 of the Judicial Code, 36 Stat. 1150 (U. S. C., Supp. VI, Title 28, Sec. 45a), do hereby enter the appearance of the Interstate Commerce Commission as a party defendant and of ourselves as its counsel in the above-entitled suit, and pray that the attached answer be filed, and that said Commission be made a party defendant in said suit for all purposes.

(Signed) Daniel W. Knowlton, Chief Counsel.
(Signed) Nelson Thomas, Attorney for Interstate Commerce Commission.

Dated February 26, 1946.

[fol. 70] IN UNITED STATES DISTRICT COURT

Civil Action No. 1072

[Title omitted]

ANSWER OF INTERVENING DEFENDANT INTERSTATE COMMERCE COMMISSION—Filed March 4, 1946

Comes now the Interstate Commerce Commission, hereinafter called the Commission, intervening defendant herein, and for its answer to the complaint or petition filed in the above-entitled suit, respectfully shows:

1

Answering paragraphs I, II, III and IV of the complaint herein, the Commission admits that the allegations therein contained are true, except that the Commission denies that paragraph II of said complaint contains a full, true, or correct statement of the orders, records, proceedings, or rate schedules, referred to in said paragraph, and calls upon plaintiffs for strict proof thereof. The Commission further alleges and shows that it has no knowledge as to whether or not the certified copy of the record before the Commis-[fol. 71] sion in proceedings in I. & S. Docket No. 5139 and Docket No. 28881, which it is alleged in paragraph III aforesaid is lodged with the Clerk herein, is a full, true, or correct copy of the record in said proceedings.

2

Answering paragraphs V to XVII, inclusive, of said complaint, the Commission denies that its said report and order of July 9, 1945, Exhibits D and E, respectively, to said complaint, are illegal, arbitrary, unreasonable, beyond the Commission's power, or void, for any of the reasons alleged in said paragraphs, or for any other reasons; and the Commission denies that it erred in denying any petition of plaintiffs or any of them to reopen, rehear, or reconsider its decision and action in any proceeding mentioned in said paragraphs, or that any of its actions were in any respect erroneous or illegal.

3

Answering paragraph XVIII of said complaint, the Commission denies that its order referred to in said para-

graph will cause plaintiffs or any of them to sustain irreparable injury or any legal injury or damage whatever.

4

Further answering the complaint, the Commission alleges and shows that in its report and order of July 9, 1945, in its I. & S. proceeding No. 5139, *Coal to Beloit, Wis., and Northern Illinois,* together with its order in its Docket No. 28881, *Bituminous Coal Rates within Illinois,* embraced in its report in the first above-named proceeding, it established a fair, reasonable, non-discriminatory, non-preferential and non-prejudicial rate structure for shipments of coal from points in Illinois, Indiana and western Kentucky to consuming points in Illinois and Wisconsin; that said [fol. 72] report and orders were made in said proceedings, in which all interested parties, including the plaintiffs herein, were, and each of them was, accorded the full hearings required by law; that said proceedings were consolidated and heard upon a single record; that in said hearings a large volume of testimony and other evidence bearing upon the matter involved in said proceedings was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of the plaintiffs herein by their counsel; that in briefs filed in said proceedings all questions relating to the matters under consideration were argued fully and submitted to the Commission, including questions raised by the plaintiffs in this suit, and that thereupon the Commission determined the issues and entered and served upon all interested parties its report and orders aforesaid; that the findings and conclusions set out in said report and in its said orders were, and each of them was and is, fully supported by the evidence. The Commission denies that its said report and orders, or either of them, was made either arbitrarily or unjustly or contrary to the relevant evidence, or without sufficient findings, or upon evidence insufficient to support them, and that in making its said report and orders the Commission alleges that it did not exceed its authority or act contrary to law, and denies each of and all the allegations in the complaint herein to the contrary.

Except as herein expressly admitted, the Commission denies each of and all the allegations contained in the complaint herein, especially in so far as they are in conflict with

any allegation of this answer or with any statement, finding, determination or conclusion made or stated by the Commission in its report and orders of July 9, 1945.

[fol. 73] Wherefore the Commission prays that the complaint herein be dismissed.

Interstate Commerce Commission, by (Signed) Nelson Thomas, Attorney.

(Signed) Daniel W. Knowlton, Chief Counsel, of Counsel.

Duly sworn to by Claude R. Porter. Jurat omitted in printing.

[fol. 74] Certificate of Service

I hereby certify that I have this day mailed a copy of the within Intervention and Answer to each of the following named persons:

B. Howard Caughran, Esq., United States Attorney, Indianapolis, Ind.

Edward Dumbauld, Esq., Special Assistant to the Attorney General, Department of Justice, Washington 25, D. C.

Burt Beasley, Esq., 108 East Washington Building, Indianapolis, Ind.

Messrs. Carlson L. Taylor and William M. Hunter, 888 Union Station Building, Chicago 6, Ill.

Messrs. Dailey, Davis, Hartsock and Baltzell, 1100 Hume-Mansur Building, Indianapolis 4, Ind.

Messrs. Gallagher, Rinaker, Wilkinson and Hall, 231 So. La Salle Street, Chicago 4, Ill.

Earle J. Zoll, Jr., Esq., Commerce Attorney, Illinois Central Railroad Company, 135 East 11th Place, Chicago 5, Ill.

A. J. Dixon, Esq., Commerce Counsel, Southern Railway Company, P. O. Box 1808, Washington, D. C.

Charles W. Stidell, Esq., 307 No. Michigan Avenue, Chicago, Ill.

M. B. Holifield, Esq., Assistant Attorney General, Frankfort, Ky.

J. E. Marks, Esq., 145 East High St., Lexington 4, Ky.

(S.) Nelson Thomas, Attorney.

Feb. 26, 1946.

[fol. 75] IN UNITED STATES DISTRICT COURT

Civil Action No. 1076

[Title omitted]

INTERVENTION OF THE INTERSTATE COMMERCE COMMISSION

To the Honorable Judges of the Aforesaid Court:

This being a suit to set aside an order of the Interstate Commerce Commission, the undersigned, in accordance with the provisions of Section 212 of the Judicial Code, 36 Stat. 1150 (U. S. C., Supp. VI, Title 28, Sec. 45a), do hereby enter the appearance of the Interstate Commerce Commission as a party defendant and of ourselves as its counsel in the above-entitled suit, and pray that the attached answer be filed, and that said Commission be made a party defendant in said suit for all purposes.

(Signed) Daniel W. Knowlton, Chief Counsel; Nelson Thomas, Attorney, for Interstate Commerce Commission.

Dated February —, 1946.

[fol. 76] IN UNITED STATES DISTRICT COURT

Civil Action No. 1076

[Title omitted]

ANSWER OF INTERVENING DEFENDANT INTERSTATE COMMERCE COMMISSION—Filed March 4, 1946

Comes now the Interstate Commerce Commission, hereinafter called the Commission, intervening defendant herein, and for its answer to the complaint or petition filed herein in the above-entitled suit, respectfully shows:

1

Answering paragraphs I, II, III, IV and VII of the complaint, the Commission admits the allegations therein contained, and the Commission alleges and shows that while as stated in the second subparagraph of Paragraph IV of the complaint the plaintiff in its tariffs filed to be effective

August 2, 1942, proposed no change in its rates to Beloit from mines on its railroad, said rates were restated and reestablished in said tariff schedules and rates between said points were and are an essential part of the proper rate structure governing rates on coal produced in Illinois, [fol. 77] Indiana and western Kentucky; and the Commission further alleges and shows that the effective date of the Commission's order of July 9, 1945, has been further extended beyond February 8, 1946, as alleged in the third subparagraph of paragraph IV of the complaint, to April 8, 1946.

2

Answering the allegations of paragraph V of the complaint, the Commission admits that coal from some mines in the Brazil and Linton, Ind., groups, which are the most northerly of the mining districts in Indiana, can move over a direct single-line route of the plaintiff's lines to Rockford, Ill., and other Illinois destinations, and to Beloit, Wis., and that coal produced from mines in the Brazil and Linton coal-mining groups on plaintiff's railroad is in competition with coal produced in the various mining groups in Illinois, but the Commission denies the allegations of the first subparagraph of said paragraph V that the quality of the Illinois coal as compared with that from Indiana mines along the plaintiff's railroad is such that the Indiana coal will not sell at northern Illinois points and at Beloit, Wis., under the rate schedules required to be established by the Commission's order of July 9, 1945; the Commission further denies that as alleged in the third subparagraph of said paragraph V, the effect of the reduction of Illinois state rates between August 20, 1930 and April 22, 1934, was "the practical elimination of the use of Indiana coal from the Brazil and Linton districts at Rockford". Further answering the allegations of the said third subparagraph, the Commission alleges and shows that while it found that distances and transportation conditions required, in general, the same rate base for rates from the Brazil group to Rockford and Beloit as for rates from the Springfield, Ill., [fol. 78] district to those points, it lawfully found different rates to be proper from the respective districts, upon consideration and comparison of not merely these two sets of rates, but of rates from all Illinois, Indiana and western Kentucky groups to all of the numerous northern Illinois destinations involved in the proceeding and Beloit.

3

Answering paragraph VI of the complaint, the Commission admits that plaintiff's railroad carries a considerable amount of coal from mines in the Indiana coal districts referred to in said paragraph VI and that it derives some profit from said operations, but the Commission alleges and shows that in establishing the rate structure prescribed in its report and order of July 9, 1945, it gave full and careful consideration to the probable effect of the same upon the revenues of the respective railroads, including that of the plaintiff, and concluded that the rate structure required to be established by it will not deprive plaintiff or any other railroad of any business, revenue, or profit to which, under all existing circumstances and conditions, it is lawfully entitled.

4

Answering paragraph VIII of the complaint, the Commission denies that its order entered in I. & S. Docket No. 5139, on July 9, 1945, together with its report, is in whole or in part null or void, or that the Commission misconstrued the law, erred or acted beyond its powers in entering said report and order, for the reasons set out in said paragraph VIII, or any of them, or for any other reason whatsoever.

5

Answering paragraphs IX and X of the complaint, the Commission denies each of and all the allegations therein contained.

[fol. 79]

6

Further answering the complaint, the Commission alleges and shows that in its report and order of July 9, 1945, in its I. & S. proceeding No. 5139, *Coal to Beloit, Wis., and Northern Illinois*, together with its order in its Docket No. 28881, *Bituminous Coal Rates within Illinois*, embraced in its report in the first above-named proceeding, it established a fair, reasonable, non-discriminatory, non-preferential, and non-prejudicial rate structure for shipments of coal from points in Illinois, Indiana, and western Kentucky to consuming points in Illinois and Wisconsin; that said report and orders were made in said proceedings to which all interested parties, including the plaintiff herein, were,

and each of them was, accorded the full hearings required by law; that said proceedings were consolidated and heard upon a single record; that in said hearings a large volume of testimony and other evidence bearing upon the matters involved in said proceedings was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of the plaintiff herein by its counsel; that in briefs filed in said proceedings all questions relating to the matters under consideration were argued fully and submitted to the Commission, including questions raised by the plaintiff in this suit, and that thereupon the Commission determined the issues and entered and served upon all interested parties its report and orders aforesaid; that the findings and conclusions set out in said report and in its said orders were, and each of them was and is, fully supported by the evidence. The Commission denies that its said report and orders, or either of them, was made either arbitrarily or unjustly or contrary to the relevant evidence, or without sufficient findings, or upon evidence insufficient to support them, and that in making its said report and orders the Commission alleges that it did [fol. 80] not exceed its authority or act contrary to law, and denies each of and all the allegations in the complaint herein to the contrary.

Except as herein expressly admitted, the Commission denies each of and all the allegations contained in the complaint herein, especially in so far as they are in conflict with any allegation of this answer or with any statement, finding, determination or conclusion made or stated by the Commission in its report and orders of July 9, 1945.

Wherefore the Commission prays that the complaint herein be dismissed.

Interstate Commerce Commission, By (Signed) Nelson Thomas, Attorney. (Signed) Daniel W. Knowlton, Chief Counsel, of Counsel.

[fol. 81] City of Washington,
District of Columbia, ss:

Claude R. Porter, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, intervening defendant in the above-entitled case, and makes this affidavit on behalf of the said Commission; that he has

read the foregoing answer and knows the contents thereof, and that the same is true.

(Signed) Claude R. Porter.

Subscribed and sworn to before the undersigned, a Notary Public in and for the District of Columbia, this 26th day of February, 1946. (Signed) J. Forney Donaldson, Notary Public. (Seal.) My Commission expires September 14, 1948.

[fols. 82-83] CERTIFICATE OF SERVICE

I hereby certify that I have this day mailed a copy of the within Intervention and Answer to each of the following named persons:

B. Howard Caughran, Esq., United States Attorney, Indianapolis, Ind.

Edward Dumbauld, Esq., Special Assistant to the Attorney General, Department of Justice, Washington 25, D. C.

Burt Beasley, Esq., 108 East Washington Building, Indianapolis, Ind.

Messrs. Carlson L. Taylor and William M. Hunter, 888 Union Station Building, Chicago 6, Ill.

Messrs. Dailey, Davis, Hartsock and Baltzell, 1100 Hume-Mansur Building, Indianapolis 4, Ind.

Messrs. Gallagher, Rinaker, Wilkinson and Hall, 231 So. La Salle Street, Chicago 4, Ill.

Earle J. Zoll, Jr., Esq., Commerce Attorney, Illinois Central Railroad Company, 135 East 11th Place, Chicago 5, Ill.

A. J. Dixon, Esq., Commerce Counsel, Southern Railway Company, P. O. Box 1808, Washington, D. C.

Charles W. Stidell, Esq., 307 No. Michigan Avenue, Chicago, Ill.

M. B. Holifield, Esq., Assistant Attorney General, Frankfort, Ky.

J. E. Marks, Esq., 145 East High St., Lexington 4, Ky.

(S.) Nelson Thomas, Attorney.

February 26, 1946.

[fol. 84] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action No. 1072

MOTION FOR LEAVE TO INTERVENE AS PARTIES DEFENDANT—Filed March 8, 1946

Come now Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau, Applicants for Intervention, by their Attorney, Charles W. Stadell, and, pursuant to Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code), move the Court to enter an order permitting them to intervene as parties defendant in the above-entitled proceeding, and to file instanter their petition in intervention, copy of which is attached hereto.

The grounds upon which Applicants rely in support of this motion are set forth in said petition.

(Signed) Charles W. Stadell, 307 North Michigan Avenue, Chicago 1, Illinois, Attorney for Applicants for Intervention.

[fol. 85] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action No. 1076

MOTION FOR LEAVE TO INTERVENE AS PARTIES DEFENDANT—Filed March 8, 1946

Come now Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau, Applicants for Intervention, by their Attorney, Charles W. Stadell, and, pursuant to Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code), move the Court to enter an order permitting them to intervene as parties defendant in the above-entitled proceeding, and to file instanter their petition in intervention, copy of which is attached hereto.

The grounds upon which Applicants rely in support of this motion are set forth in said petition.

(Signed) Charles W. Stadell, 307 North Michigan Avenue, Chicago 1, Illinois, Attorney for Applicants for Intervention.

[fol. 86] In United States District Court

No. 1072 Civil—No. 1076 Civil

Order Granting Leave to Intervene—March 8, 1946

This cause coming on to be heard on the motion of the above-named Applicants for leave to intervene as parties defendant, and the Court having considered said motion and the petition tendered therewith, and it appearing to the Court that said Applicants should be permitted to intervene, as prayed, and the Court being fully advised in the premises,

It Is Ordered, That Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau, Inc., and they hereby are, granted leave to intervene in the above-entitled proceeding as parties defendant and to file instanter their petition in intervention therein, and

It Is Further Ordered, that the attorney for Applicants shall give notice of the entry of this order, and at the time of giving such notice shall serve by personal delivery, or by registered mail, true and correct copies of this order and of the motion and petition in intervention on the Attorney General of the United States, the Interstate Commerce Commission, the United States District Attorney for the Southern District of Indiana, and the attorneys for the plaintiffs and intervenors herein.

[fol. 87] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action No. 1072

PETITION FOR LEAVE TO INTERVENE AS DEFENDANTS—Filed March 8, 1946

Come now Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau, by their Attorney, Charles W. Stadell, Applicants for Intervention in the above-entitled proceeding, and for grounds of their proposed intervention as parties defendant respectfully state:

I

That the above-entitled proceeding was commenced in this Court by the Ayrshire Collieries Corporation, a corporation, et al., original petitioners, by the filing of a petition on December 21, 1945, seeking to enjoin, set aside, annul and suspend a certain order of the Interstate Commerce Commission dated July 9, 1945, and subsequently amended, entered in a proceeding entitled "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois." By said order, [fol. 88] as amended, the respondent railroads are required to establish, on or before February 8, 1946, certain revised rates on coal, carloads, from mines, in the midwestern coal field, including mines in western Kentucky, to destinations in northern Illinois and to Beloit, Wisconsin.

II

That Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau are voluntary associations

composed of corporations, firms, and individuals which own and operate bituminous coal mines in the Central Illinois, DuQuoin, Centralia, and Southern Illinois districts, all in the state of Illinois. The coal producing companies comprising the membership of the above named Applicants collectively produce approximately 45 percent of the bituminous coal that is produced in the state of Illinois by mines served by carriers by rail. That Applicants were each authorized by the Interstate Commerce Commission to intervene in its "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois," and they did intervene and actively participate in said proceedings before such Commission. The specific finding respecting the freight rates on bituminous coal from the mines in the Central Illinois, DuQuoin, Centralia, and Southern Illinois districts to the destination territory involved are set forth at numerous places in the Commission's report of July 9, 1945.

[fol. 89] IV

That the coal mining companies, members of the Applicants herein, market or endeavor to market a portion of their product at the destinations embraced in said order of the Interstate Commerce Commission; that their ability to market their products at such destinations in competition with producers of coal whose mines are located in the state of Indiana, depend in a substantial measure upon the establishment and maintenance of reasonable and otherwise lawful freight rates and upon reasonable and nondiscriminatory freight rate relationships on coal from their mines and from the mines in Indiana to such destinations, and that Applicants' members will be denied the benefit of the rates and rate relationships prescribed by the Interstate Commerce Commission in its said report and order of July 9, 1945, and will be irreparably damaged if said order is enjoined, set aside, annulled, or suspended, as sought by petitioners.

Wherefore, Applicants, in accordance with the provisions of Section 45a of Title 28, of the United States Code, pray the Court for leave to intervene as parties defendant in opposition to the petition filed by the Ayrshire Collieries Corporation, a corporation, et al., in the above-entitled proceeding.

(Signed) Charles W. Stadell, 307 North Michigan Avenue, Chicago 1, Illinois, Attorney for Applicants for Intervention.

[fol. 90] *Duly sworn to by Henry C. Woods. Jurat omitted in printing.*

[fol. 91] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action No. 1076

PETITION FOR LEAVE TO INTERVENE AS DEFENDANTS—Filed March 8, 1946

Come now Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau, by their Attorney, Charles W. Stadell, Applicants for Intervention in the above-entitled proceeding, and for grounds of their proposed intervention as parties defendant respectfully state:

I

That the above-entitled proceeding was commenced in this Court by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, original petitioner, by the filing of a petition, on December 27, 1945, seeking to enjoin, set aside, annul and suspend a certain order of the Interstate Commerce Commission dated July 9, 1945, and subsequently amended, entered in a proceeding entitled "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois." By said order, [fol. 92] as amended, the respondent railroads are required to establish, on or before February 8, 1946, certain revised rates on coal, carloads, from mines, in the midwestern coal field, including mines in western Kentucky, to destinations in northern Illinois and to Beloit, Wisconsin.

II

That Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau are voluntary associations composed of corporations, firms, and individuals which own and operate bituminous coal mines in the Central Illinois, DuQuoin, Centralia, and Southern Illinois districts, all in the state of Illinois. The coal producing companies comprising the membership of the above named Applicants collectively produce approximately 45 percent of the bituminous coal that is produced in the state of Illinois by mines served by carriers by rail. That Applicants were each authorized by the Interstate Commerce Commission to Intervene in its "I. & S. Docket No. 5139, Coal to Beloit, Wis. and Northern Illinois," and they did intervene and actively participate in said proceedings before such Commission. The specific finding- respecting the freight rates on bituminous coal from the mines in the Central Illinois, DuQuoin, Centralia, and Southern Illinois districts to the destination territory involved are set forth at numerous places in the Commission's report of July 9, 1945.

[fol. 93] IV

That the coal mining companies, members of the Applicants herein, market or endeavor to market a portion of their product at the destinations embraced in said order of the Interstate Commerce Commission; that their ability to market their products at such destinations in competition with producers of coal whose mines are located in the state of Indiana, depend- in a substantial measure upon the establishment and maintenance of reasonable and otherwise lawful freight rates and upon reasonable and nondiscriminatory freight rate relationships on coal from their mines and from the mines in Indiana to such destinations, and that Applicants' members will be denied the benefit of the rates and rate relationships prescribed by the Interstate Commerce Commission in its said report and order of July 9, 1945, and will be irreparably damaged if said order is enjoined, set aside, annulled, or suspended, as sought by petitioners.

Wherefore, Applicants, in accordance with the provisions of Section 45a of Title 28, of the United States Code, pray the Court for leave to intervene as parties defendant in

opposition to the petition filed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in the above-entitled proceeding.

(Signed) Charles W. Stadell, 307 North Michigan Avenue, Chicago 1, Illinois, Attorney for Applicants for Intervention.

[fol. 94] *Duly sworn to by Henry C. Woods. Jurat omitted in printing.*

[fols. 95-96] In United States District Court

No. 1072 Civil—No. 1076 Civil

Order Reassigning Cause—March 21, 1946

It is ordered by the Court that the trial date in the above entitled cause be, and the same is, hereby vacated, and that this cause be, and the same is, hereby reassigned for trial to Monday, April 22, 1946, at 10:00 A. M.

[fol. 97] In United States District Court

[Title omitted]

Civil Action No. 1072

Motion for Leave to Intervene—Filed March 26, 1946

Come now Tecumseh Coal Company, Sunlight Coal Company and Northern Illinois Coal Corporation, Indiana and Illinois Corporations, by their Attorneys, Barnes, Hickman, Pantzer & Boyd, of Indianapolis, Indiana, and Clarence B. Cardy, of Chicago, Illinois, Applicants for Intervention, and, pursuant to Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code), move the Court to enter an order permitting them to intervene as parties defendant in the above-entitled proceeding, and to file instanter their petition in intervention, copy of which is attached hereto.

(S.) Thomas M. Scanlon. Barnes, Hickman, Pantzer & Boyd, 1313 Merchants Bank Building, Indianapolis 4, Indiana. Clarence B. Cardy, 643 West 70th Street, Chicago 21, Illinois, Attorneys for Applicants for Intervention.

[fol. 98] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action No. 1076

MOTION FOR LEAVE TO INTERVENE—Filed March 26, 1946

Come now Tecumseh Coal Company, Sunlight Coal Company and Northern Illinois Coal Corporations, Indiana and Illinois Corporations, by their Attorneys, Barnes, Hickman, Pantzer & Boyd, of Indianapolis, Indiana, and Clarence B. Cardy, of Chicago, Illinois, Applicants for Intervention, and, pursuant to Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code), move the Court to enter an order permitting them to intervene as parties defendant in the above-entitled proceeding, and to file instanter their petition in intervention, copy of which is attached hereto.

(S). Thomas M. Scanlon. Barnes, Hickman, Pantzer & Boyd, 1313 Merchants Bank Building, Indianapolis 4, Indiana. Clarence B. Cardy, 643 West 70th Street, Chicago 21, Illinois, Attorneys for Applicants for Intervention.

[fol. 99] IN UNITED STATES DISTRICT COURT

No. 1072 Civil—No. 1076 Civil

ORDER GRANTING LEAVE TO INTERVENE—March 26, 1946

This cause coming on to be heard on the motion of the above-named Applicants for leave to intervene as parties defendant, and the Court having considered said motion and the petition tendered therewith, and it appearing to the Court that said Applicants should be permitted to intervene, as prayed, and the Court being fully advised in the premises,

It Is Ordered, That Tecumseh Coal Company, Sunlight Coal Company and Northern Illinois Coal Corporation, Indiana and Illinois Corporations, be, and they hereby are, granted leave to intervene in the above entitled proceeding as parties defendant and to file instanter their petition in intervention therein.

[fol. 100] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action No. 1072

PETITION FOR LEAVE TO INTERVENE AS DEFENDANTS—Filed March 26, 1946

Come now Tecumseh Coal Company, Sunlight Coal Company and Northern Illinois Coal Corporation, Indiana and Illinois Corporations, by their Attorneys, Barnes, Hickman, Pantzer & Boyd, of Indianapolis, Indiana, and Clarence B. Cardy, of Chicago, Illinois, Applicants for Intervention in the above-entitled proceeding, and for grounds of their proposed intervention as parties defendant respectfully state:

I

That the above-entitled proceeding was commenced in this Court by the Ayrshire Collieries Corporation; a corporation, et al., original petitioners, by the filing of a petition on December 21, 1945, seeking to enjoin, set aside, annul and suspend a certain order of the Interstate Commerce Commission dated July 9, 1945, and subsequently amended, entered in a proceeding entitled "I. & S. Docket No. 5139, Coal to Beloit, Wis., and Northern Illinois." By said order, as amended, the respondent railroads are required to estab-[fol. 101] lish, on or before February 8, 1946, certain revised rates on coal, carloads, from mines, in the midwestern coal field, including mines in western Kentucky, to destinations in Northern Illinois and to Beloit, Wisconsin.

II

That Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That the Tecumseh Coal Company is an Indiana Corporation, owning and operating a coal mine at Tecumseh, In-

diana, located in the Princeton-Ayrshire Coal Freight Rate Group; that the Sunlight Coal Company is an Indiana Corporation, owning and operating a coal mine at Boonville, Indiana, located in the Boonville Coal Freight Rate Group; and that the Northern Illinois Coal Corporation, is an Illinois Corporation, owning and operating a coal mine at Wilmington, Illinois, located in the Northern Illinois Coal Freight Rate Group. That Applicants were each authorized by the Interstate Commerce Commission to intervene in its "I. & S. Docket No. 5139, Coal to Beloit, Wis., and Northern Illinois," and they did intervene and actively participate in said proceedings before such Commission. The specific finding- respecting the freight rates on bituminous coal from the mines in said Coal Freight Rate Groups to the destination territory involved are set forth at numerous places in the Commission's report of July 9, 1945.

[fol. 102] That said coal mining companies, market or endeavor to market a portion of their product at the destinations embraced in said order of the Interstate Commerce Commission; that their ability to market their products at such destinations in competition with producers of coal whose mines are located in the States of Indiana and Illinois, depend- in a substantial measure upon the establishment and maintenance of reasonable and otherwise lawful freight rates and upon reasonable and nondiscriminatory freight rate relationships on coal from their mines and from the mines in Indiana to such destinations, and that Applicants will be denied the benefit of the rates and rate relationships prescribed by the Interstate Commerce Commission in its said report and order of July 9, 1945, and will be irreparably damaged if said order is enjoined, set aside, annulled, or suspended, as sought by petitioner.

Wherefore, Applicants, in accordance with the provisions of Section 45a of Title 28, of the United States Code, pray the Court for leave to intervene as parties defendant in opposition to the petition filed by the Ayrshire Collieries Corporation, a Corporation, et al., in the above-entitled proceeding.

(S). Thomas M. Scanlon. Barnes, Hickman, Pantzer & Boyd, 1313 Merchants Bank Building, Indianapolis 4, Indiana. Clarence B. Cardy, 643 West 70th Street, Chicago 21, Illinois, Attorneys for Applicants for Intervention.

[fol. 103] *Duly sworn to by Robert H. May. Jurat omitted in printing.*

[fol. 104] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action No. 1076

PETITION FOR LEAVE TO INTERVENE AS DEFENDANTS—Filed March 26, 1946

Come now Tecumseh Coal Company, Sunlight Coal Company and Northern Illinois Coal Corporations, Indiana and Illinois Corporations, by their Attorneys, Barnes, Hickman, Pantzer & Boyd, of Indianapolis, Indiana, and Clarence B. Cardy, of Chicago, Illinois, Applicants for Intervention in the above-entitled proceeding, and for grounds of their proposed intervention as parties defendant respectfully state:

I

That the above-entitled proceeding was commenced in this Court by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, original petitioner, by the filing of a petition, on December 27, 1945, seeking to enjoin, set aside, annul and suspend a certain order of the Interstate Commerce Commission dated July 9, 1945, and subsequently amended, entered in a proceeding "I. & S. Docket No. 5139, Coal to Beloit, Wis., and Northern Illinois." By said order, [fol. 105] as amended, the respondent railroads are required to establish, on or before February 8, 1946, certain revised rates on coal, carloads, from mines, in the midwestern coal field, including mines in western Kentucky, to destinations in Northern Illinois and to Beloit, Wisconsin.

II

That Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and

be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That the Tecumseh Coal Company is an Indiana Corporation, owning and operating a coal mine at Tecumseh, Indiana, located in the Princeton-Ay-shire Coal Freight Rate Group; that the Sunlight Coal Company is an Indiana Corporation, owning and operating a coal mine at Boonville, Indiana, located in the Boonville Coal Freight Rate Group; and that the Northern Illinois Coal Corporation, is an Illinois Corporation, owning and operating a coal mine at Wilmington, Illinois, located in the Northern Illinois Coal Freight Rate Group. That Applicants were each authorized by the Interstate Commerce Commission to intervene in its "I. & S. Docket No. 5139, Coal to Beloit, Wis., and Northern Illinois," and they did intervene and actively participate in said proceedings before such Commission. The specific finding- respecting the freight rates on bituminous coal from the mines in said Coal Freight Rate Groups to the destination territory involved are set forth at numerous places in the Commission's report of July 9, 1945.

[fol. 106]

IV

That said coal mining companies, market or endeavor to market a portion of their product at the destinations embraced in said order of the Interstate Commerce Commission; that their ability to market their products at such destinations in competition with producers of coal whose mines are located in the States of Indiana and Illinois, depend- in a substantial measure upon the establishment and maintenance of reasonable and otherwise lawful freight rates and upon reasonable and nondiscriminatory freight rate relationships on coal from their mines and from the mines in Indiana to such destinations, and that Applicants will be denied the benefit of the rates and rate relationships prescribed by the Interstate Commerce Commission in its said report and order of July 9, 1945, and will be irreparably damaged if said order is enjoined, set aside, annulled, or suspended, as sought by petitioner.

Wherefore, Applicants, in accordance with the provisions of Section 45a of Title 28, of the United States Code, pray the Court for leave to intervene as parties defendants in

opposition to the petition filed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in the above-entitled proceeding.

(S). Thomas M. Scanlon. Barnes, Hickman, Pantzer & Boyd, 1313 Merchants Bank Building, Indianapolis 4, Indiana. Clarence B. Cardy, 643 West 70th Street, Chicago 21, Illinois, Attorneys for Applicants for Intervention.

[fols. 107-108] *Duly sworn to by Robert H. May. Jurat omitted in printing.*

[fol. 109] Copy

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Titles omitted]

Civil No. 1072. Civil No. 1076

ANSWER OF INTERVENING DEFENDANTS, RAILROAD COMMISSION OF KENTUCKY, AND KENTUCKY COAL AGENCY, INCORPORATED —Filed March 30, 1946

Come now Railroad Commission of Kentucky and Kentucky Coal Agency, Incorporated, hereinafter called the Kentucky interests, intervening defendants herein, and file this their joint and several answer to the complaint or petitions in the above entitled cases:

[fols. 110-111] I

The Kentucky interests hereby adopt the answers filed herein on behalf of the United States of America, the defendant in said cases, as their answer in the same manner and to the same extent as though each paragraph thereof were herein fully set out.

II

In further answer, the Kentucky interests specifically deny the allegations contained in Paragraphs V through XVIII, both inclusive, of the petition in Case No. 1072, and they also specifically deny the allegations contained in Paragraph XIII, IX and X of the petition in Case No. 1076,

in so far as said allegations relate to matters of fact and the Kentucky interests disagree with the conclusions of law and opinions of the pleaders set forth in said paragraphs.

Wherefore, the Kentucky interests pray that the petitions in these cases be dismissed.

Railroad Commission of Kentucky, by (S.) Eldon S. Dummit, Attorney General of Kentucky. M. B. Holifield, Assistant Attorney General of Kentucky, State Capitol, Frankfort, Kentucky.

Kentucky Coal Agency, Incorporated, by (S.) J. E. Marks, 145 East High Street, Lexington 4, Kentucky, Attorney.

J. E. Marks, 145 East High Street, Lexington 4, Kentucky, Of Counsel.

March 25, 1946.

[fol. 112] In the United States District Court

[Title omitted]

Civil Action. No. 1072

Motion for Leave to Intervene as Parties Defendant—Filed April 12, 1946

Come now Belleville Fuels, Incorporated and Fifth and Ninth Districts Coal Traffic Bureau, Applicants for Intervention, by their Attorney, Richard F. Wood, and, pursuant to Section 45a of Title 28 of the United States Code (Sections 212 and 213 of the Judicial Code), move the Court to enter an order permitting them to intervene as parties defendant in the above-entitled proceeding, and to file instanter their petition in intervention, copy of which is attached hereto.

The grounds upon which Applicants rely in support of this motion are set forth in said petition.

(Signed) Richard F. Wood, 407 N. Eighth Street, St. Louis 1, Missouri, Attorney for Applicants for Intervention.

[fol. 113] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action No. 1076

MOTION FOR LEAVE TO INTERVENE AS PARTIES DEFENDANT—Filed April 12, 1946

Come now Belleville Fuels, Incorporated and Fifth and Ninth Districts Coal Traffic Bureau, Applicants for Intervention, by their Attorney, Richard F. Wood, and, pursuant to Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code), move the Court to enter an order permitting them to intervene as parties defendant in the above-entitled proceeding, and to file instanter their petition in intervention, copy of which is attached hereto.

The grounds upon which Applicants rely in support of this motion are set forth in said petition.

(Signed) Richard F. Wood, 407 N. Eighth Street, St. Louis 1, Missouri, Attorney for Applicants for Intervention.

[fol. 114] IN UNITED STATES DISTRICT COURT

No. 1072 Civil—No. 1076 Civil

ORDER GRANTING LEAVE TO INTERVENE—April 12, 1946

This cause coming on to be heard on the motion of the above-named Applicants for leave to intervene as parties defendant, and the Court having considered said motion and the petition tendered therewith, and it appearing to the Court that said Applicants should be permitted to intervene, as prayed, and the Court being fully advised in the premises,

It Is Ordered, That Belleville Fuels, Incorporated and Fifth and Ninth Districts Coal Traffic Bureau, be, and they hereby are, granted leave to intervene in the above-entitled proceeding as parties defendant and to file instanter their petition in intervention therein, and

It Is Further Ordered, that the Attorney for Applicants shall give notice of the entry of this order, and at the time of giving such notice shall serve by personal delivery, or by registered mail, true and correct copies of this order

and of the motion and petition in intervention on the Attorney General of the United States, the Interstate Commerce Commission, the United States District Attorney for the Southern District of Indiana, and the Attorneys for the plaintiffs and intervenors herein.

[fol. 115] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action No. 1072

PETITION FOR LEAVE TO INTERVENE AS DEFENDANTS—Filed April 12, 1946

Come now Belleville Fuels, Incorporated and Fifth and Ninth Districts Coal Traffic Bureau, by their Attorney, Richard F. Wood, Applicants for Intervention in the above-entitled proceeding, and for grounds of their proposed intervention as parties defendant respectfully state:

I

That the above-entitled proceeding was commenced in this Court by the Ayrshire Collieries Corporation, a corporation, et al., original petitioners, by the filing of a petition on December 21, 1945, seeking to enjoin, set aside, annul and suspend a certain order of the Interstate Commerce Commission dated July 9, 1945, and subsequently amended, entered in a proceeding entitled "I. & S. Docket No. 5139, Coal to Beloit, Wisconsin and Northern Illinois." By said order, as amended, the respondent railroads are required to establish, on or before February 8, 1946, certain revised rates on coal, carloads, from mines, in the midwestern coal field, including mines in western Kentucky, to destina-
[fol. 116] tions in northern Illinois and to Beloit, Wisconsin.

II

That Section 45a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear

as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That Belleville Fuels, Incorporated, is a Corporation organized under the laws of the state of Delaware and represents corporations, firms, and individuals which own and operate bituminous coal mines in the Belleville and DuQuoin districts in the state of Illinois. Fifth and Ninth Districts Coal Traffic Bureau is a voluntary association of corporations, firms and individuals which own and operate bituminous coal mines in the Belleville and DuQuoin districts in the state of Illinois. The coal producing companies comprising the membership of the above named Applicants collectively produce approximately seven million tons of bituminous coal annually. That Applicants were each authorized by the Interstate Commerce Commission to intervene in its "I. & S. Docket No. 5139, Coal to Beloit, Wisconsin and Northern Illinois," and they did intervene and actively participated in said proceedings before such Commission. The specific finding- respecting the freight rates on bituminous coal from the mines in the DuQuoin and Belleville districts to the destination territory involved are set forth at numerous places in the Commission's report of July 9, 1945.

IV

That the coal mining companies, members of the Applicants herein, market or endeavor to market a portion of their product at the destinations embraced in said order of the Interstate Commerce Commission; that their ability to market their products at such destinations in competition with producers of coal whose mines are located in the state of Indiana, depends in a substantial measure upon the establishment and maintenance of reasonable and otherwise lawful freight rates and upon reasonable and nondiscriminatory freight rate relationships on coal from their mines and from the mines in Indiana to such destinations, and that [fol. 117] Applicants' mer bers will be denied the benefit of the rates and rate relationships prescribed by the Interstate Commerce Commission in its said report and order of July 9, 1945, and will be irreparably damaged if said order is enjoined, set aside, annulled, or suspended, as sought by petitioners.

Wherefore, Applicants, in accordance with the provisions of Section 45a of Title 28, of the United States Code, pray the Court for leave to intervene as parties defendant in opposition to the petition filed by the Ayrshire Collieries Corporation, a corporation, et al., in the above-entitled proceeding.

(Signed) Richard F. Wood, 407 N. Eighth Street, St. Louis 1, Missouri, Attorney for Applicants for Intervention.

Duly sworn to by Harold F. Cholet. Jurat omitted in printing.

[fol. 118] In United States District Court

[Title omitted]

Civil Action No. 1076

Petition for Leave to Intervene as Defendants—Filed April 12, 1946

Come now Belleville Fuels, Incorporated and Fifth and Ninth Districts Coal Traffic Bureau, by their Attorney, Richard F. Wood, Applicants for Intervention in the above-entitled proceeding, and for grounds of their proposed intervention as parties defendant respectfully state:

I

That the above-entitled proceeding was commenced in this Court by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, original petitioner, by the filing of a petition, on December 27, 1945, seeking to enjoin, set aside, annul and suspend a certain order of the Interstate Commerce Commission dated July 9, 1945, and subsequently amended, entered in a proceeding entitled "I. & S. Docket No. 5139, Coal to Beloit, Wisconsin and Northern Illinois." By said [fol. 119] order, as amended, the respondent railroads are required to establish, on or before February 8, 1946, certain revised rates on coal, carloads, from mines, in the mid-western coal field, including mines in western Kentucky, to destinations in northern Illinois and to Beloit, Wisconsin.

II

That Section 43a of Title 28, of the United States Code (Sections 212 and 213 of the Judicial Code) provides in part, "That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement."

III

That Belleville Fuels, Incorporated, is a Corporation organized under the laws of the state of Delaware and represents corporations, firms, and individuals which own and operate bituminous coal mines in the Belleville and DuQuoin districts in the state of Illinois. Fifth and Ninth Districts Coal Traffic Bureau is a voluntary association of corporations, firms and individuals which own and operate bituminous coal mines in the Belleville and DuQuoin districts in the state of Illinois. The coal producing companies comprising the membership of the above named Applicants collectively produce approximately seven million tons of bituminous coal annually. That Applicants were each authorized by the Interstate Commerce Commission, to intervene in its "I. & S. Docket No. 5139, Coal to Beloit, Wisconsin and Northern Illinois," and they did intervene and actively participated in said proceedings before such Commission. The specific finding- respecting the freight rates on bituminous coal from the mines in the DuQuoin and Belleville districts to the destination territory involved are set forth at numerous places in the Commission's report of July 9, 1945.

IV

That the coal mining companies, members of the Applicants herein, market or endeavor to market a portion of their product at the destinations embraced in said order of the Interstate Commerce Commission; that their ability to market their products at such destinations in competition with producers of coal whose mines are located in the state of Indiana, depends in a substantial measure upon the establishment and maintenance of reasonable and otherwise

lawful freight rates and upon reasonable and nondiscriminatory freight rate relationships on coal from their mines and from the mines in Indiana to such destinations, and [fol. 120] that Applicants' members will be denied the benefit of the rates and rate relationships prescribed by the Interstate Commerce Commission in its said report and order of July 9, 1945, and will be irreparably damaged if said order is enjoined, set aside, annulled, or suspended, as sought by petitioners.

Wherefore, Applicants, in accordance with the provisions of Section 45a of Title 28, of the United States Code, pray the Court for leave to intervene as parties defendant in opposition to the petition filed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in the above-entitled proceeding.

(Signed) Richard F. Wood, 407 N. Eighth Street, St. Louis 1, Missouri, Attorney for Applicants for Intervention.

Duly sworn to by Harold F. Cholet. Jurat omitted in printing.

[fol. 121] In United States District Court

[Title omitted]

No. 1072 Civil

Designation of Judge—Filed April 20, 1946

Public interest requiring, I hereby designate and assign the Honorable J. Earl Major, United States Circuit Judge in and for the Seventh Judicial Circuit, to sit as United States District Judge of the United States District Court for the Southern District of Indiana, and to sit as the said District Judge in said court to try or participate in the trial of the above entitled action now pending in said court.

(Signed) Evan A. Evans, Senior United States Circuit Judge in and for the Seventh Judicial Circuit.

Chicago, Illinois, April 17, 1946."

[fols. 122-123] IN UNITED STATES DISTRICT COURT

No. 1072 Civil—No. 1076 Civil

ORDER OF SUBMISSION—April 22, 1946

Come now the parties in each of the above entitled consolidated causes of action by their respective attorneys and now in open court, it is agreed by all of the parties that said consolidated causes of action be submitted for final hearing upon the plaintiffs' petitions for a permanent injunction before a three-judge court in the Court Room of the United States Circuit Court of Appeals for the Seventh Circuit at Chicago, Illinois.

The above entitled consolidated causes of action are now submitted in accordance with said agreement for final hearing upon the plaintiffs' petitions for a permanent injunction to a specially constituted court of three-judges as required by 28 U. S. C. A. 47 (38 Stat. 220) and the evidence being heard and concluded and the argument of counsel being heard, the Attorneys for the defendant, United States of America and the intervenor, Interstate Commerce Commission, now request and are given ten (10) days within which to file a brief herein.

The parties are given ten (10) days from and after this date within which to submit drafts of their suggested findings of fact and conclusions of law.

[fol. 124] DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION

Civil Action No. 1072

AYRSHIRE COLLIERIES CORPORATION, et al., Plaintiffs,

v.

UNITED STATES, Defendant,

INTERSTATE COMMERCE COMMISSION, ET AL., Intervening Defendants.

Civil Action No. 1076

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, Plaintiff,

vs.

UNITED STATES, Defendant,

INTERSTATE COMMERCE COMMISSION, ET AL., Intervening Defendants.

Findings of Fact and Conclusions of Law—Filed June 5, 1946

The above-entitled causes coming on for final hearing on the merits before this duly constituted three-judge court [1] on April 22, 1946, upon the pleadings, evidence, arguments and briefs of counsel for the respective parties, the Court makes and enters its findings of fact and conclusions of law as follows:

Findings of Fact

1. Each of the plaintiffs in the first of the above-entitled cases is now, and at all times hereinafter mentioned has been, a corporation duly organized and existing under the laws of one or more of the States of the United States, or [fol. 125] an individual, and each of them now is, and at all

[1] Judge Evan A. Evans became ill subsequent to the hearing of these causes and he is and has been unable to participate in a determination thereof. The findings of fact, conclusions of law and judgment have therefore been entered by the remaining judges of such court.

times hereinafter mentioned has been, engaged in the operation of a coal mine or mines in the State of Indiana, except the plaintiff Coal Trade Association of Indiana, which is a voluntary association whose members are composed of the other plaintiffs in such action and certain other persons and corporations operating coal mines in Indiana.

2. The Chicago, Milwaukee, St. Paul & Pacific Railroad Company, plaintiff in the second of the above-entitled actions, is a corporation, organized and existing under and by virtue of the laws of the State of Wisconsin, and owns and operates lines of railroad in the States of Indiana, Illinois, Wisconsin, and certain other States, and is engaged in the transportation of property and persons for hire, both interstate and intrastate, as a common carrier by railroad, subject to the Interstate Commerce Act. It has its principal office at Chicago, Illinois.

3. Heretofore, on July 30, 1942, the Chicago, Milwaukee, St. Paul & Pacific Railroad Company and other carriers having filed with the Interstate Commerce Commission (hereafter called the Commission) certain tariffs containing schedules stating individual and joint rates and charges, and individual and joint regulations and practices affecting such rates and charges, governing the interstate transportation of coal from Illinois, Indiana, and western Kentucky, to Rockford and other destinations in northern Illinois, and to Beloit and other destinations in southern Wisconsin, the Commission, upon complaint of the plaintiff Coal Trade Association of Indiana, suspended the operation of said tariffs and entered upon an investigation as to the lawfulness of the rates, charges, regulations, and practices stated in those tariffs. This proceeding was designated by the Commission as *Investigation and Suspension Docket No. 5139, Coal to Beloit, Wisconsin and Northern Illinois.*

4. Heretofore, on September 9, 1942, a petition having [fol. 126] been filed with the Commission, on behalf of the Alton Railroad Company and other common carriers by railroad operating in the State of Illinois, averring that the Illinois Commerce Commission required those carriers to maintain rates for application on coal moving by rail in intrastate commerce within the State of Illinois from producing points to Rockford, Freeport, Dixon and other destina-

tions north and west of Chicago in Illinois, which were less than those on interstate traffic and those railroads having alleged that the observance of them of the said intrastate rates caused and resulted in undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other, and undue, unreasonable and unjust discrimination against interstate commerce, the Commission entered upon an investigation as to the lawfulness of the said intrastate rates on coal. This investigation was designated by the Commission as *Docket No. 28881, Bituminous Coal Rates Within Illinois.*

5. As the rates involved in both proceedings related to the coal rate structure from Illinois, Indiana and western Kentucky, to northern Illinois and southern Wisconsin, the two investigation proceedings were consolidated for hearing and were heard together before examiners of the Commission. Evidence was adduced before the Commission by the plaintiffs in the above-entitled actions and others bearing upon the lawfulness of all the rates contained in the schedules under investigation, all of which has been adduced before this Court. A report covering both proceedings was proposed by an examiner of the Commission and exceptions were filed thereto by certain parties to the proceedings. Thereafter, on July 9, 1945, the Commission made and entered its report and order covering both proceedings, which report appears in 263 I. C. C. 179. These actions were brought to set aside the Commission's report and order dated July 9, 1945.

6. The Commission found that the present and proposed rates of the railroads were unlawful in certain respects, as [fol. 127] shown in the Commission's report dated July 9, 1945. Accordingly, pursuant to its authority under Section 15 of the Interstate Commerce Act, the Commission prescribed interstate and intrastate rates to be published and collected by the carriers for the transportation of coal between the points involved in such proceedings and fixed relationships between certain producing areas in Illinois, Indiana and western Kentucky in lieu of the existing and proposed rates and relationships as stated in the tariffs under investigation.

Conclusions of Law

1. This Court has jurisdiction of the parties and the subject matter of these actions.

2. The Commission's report and order dated July 9, 1945, were made within its statutory authority and are supported by adequate findings of fact.

3. The findings of the Commission as set forth in the report and order of July 9, 1945, have substantial support in the record made before the Commission and afford a rational basis for its conclusions.

4. The plaintiffs were afforded a full and fair hearing before the Commission and the record made before the Commission discloses no error of law.

5. The Commission's report and order are lawful and valid in all respects.

6. The plaintiffs' complaints should be dismissed.

(Signed.) J. Earl Major, United States Circuit Judge.
(Signed) Michael L. Igoe, United States District Judge.

Dated this 5th day of June, 1946.

[fols. 128-129] In United States District Court

No. 1072 Civil—No. 1076 Civil

Judgment—June 5, 1946

The above-entitled cause coming on, and the court having made and entered its findings of fact and conclusions of law therein,

Now Therefore, it is hereby ordered, adjudged and decreed that the plaintiffs' complaints be dismissed at their costs.

[fol. 130] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 1072 Civil. No. 1076 Civil

[Title omitted]

PETITION FOR APPEAL—Filed July 30, 1946

Ayrshire Collieries Corporation, a corporation, Big Ben Collieries, Inc., a corporation, Birch Creek Coal Company, Ind., a corporation, Blackfoot Coal & Land Corporation, a corporation, Blackhawk Coal Corporation, a corporation, Walter Bledsoe & Company, a corporation, Boonville Coal Sales Corporation, a corporation, Central Indiana Coal Company, Inc., a corporation, The Enos Coal Mining Company, a corporation, Glendora Coal Company, a corporation, Hickory Grove Coal Mining Corporation, a corporation, Ingle Coal Corporation, a corporation, Knox Consolidated Coal Corporation, a corporation, Linton Summit Coal Company, Inc., a corporation, Little Betty Mining Corporation, a corporation, Mariah Hill Super Block Coal Company, a corporation, The Maumee Collieries Company, a corporation, Princeton Mining Company, a corporation, Pyramid [fols. 131-132] Coal Corporation, a corporation, Sherwood-Templeton Coal Company, a corporation, Snow Hill Coal Corporation, a corporation, Standard Coal Company, a corporation, Paul E. Horton, doing business as Hill Coal Company, H. A. Siepman, doing business as H. A. Siepman Coal Company, and Coal Trade Association of Indiana, a voluntary association, plaintiffs in the above entitled cause No. 1072, and the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, plaintiff in the above entitled cause No. 1076 (which said causes No. 1072 and No. 1076 by order of this court, had been consolidated for all purposes) feeling themselves aggrieved by the final decree of the District Court of the United States for the Southern District of Indiana, Indianapolis Division entered in said court of June 5th, 1946 in each of said causes which theretofore had been consolidated, jointly and severally pray an appeal from said decree to the Supreme Court of the United States.

The particulars wherein the said plaintiffs in each of said causes consider the decree erroneous, are set forth in the

assignment of errors accompanying this petition, to which reference is hereby made.

Said plaintiffs pray that a transcript of record, proceedings and papers on which said decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Dated July 29, 1946.

Earl B. Wilkinson, J. Alfred Moran, Attorneys for Plaintiffs in Cause No. 1072. Canon L. Taylor, William L. Hunter, Attorneys for Plaintiff in Cause No. 1076.

[fol. 133] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 1072 Civil. No. 1076 Civil

[Title omitted]

ASSIGNMENT OF ERRORS—Filed July 30, 1946

Now come Ayrshire Collieries Corporation, a corporation, Big Ben Collieries, Inc., a corporation, Birch Creek Coal Company, Inc., a corporation, Blackfoot Coal & Land Corporation, a corporation, Blackhawk Coal Corporation, a corporation, Walter Bledsoe & Company, a corporation, Boonville Coal Sales Corporation, a corporation, Central Indiana Coal Company, Inc., a corporation, The Enos Coal Mining Company, a corporation, Glendora Coal Company, a corporation, Hickory Grove Coal Mining Corporation, a corporation, Ingle Coal Corporation, a corporation, Knox Consolidated Coal Corporation, a corporation, Linton Summit Coal Company, Inc., a corporation, Little Betty Mining Corporation, a corporation, Mariah Hill Super Block Coal Company, a corporation, The Maumee Collieries Company, a corporation, Princeton Mining Company, a corporation, [fol. 134] Pyramid Coal Corporation, a corporation, Sherwood-Templeton Coal Company, a corporation, Snow Hill Coal Corporation, a corporation, Standard Coal Company, a corporation, Paul E. Horton, doing business as Hill Coal Company, H. A. Siepman, doing business as H. A. Siepman Coal Company, and Coal Trade Association of Indiana, a

voluntary association, plaintiffs in the above entitled cause No. 1072, and the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, plaintiff in the above entitled cause No. 1076, by their respective counsel, and in connection with their appeals, file the following assignment of errors upon which plaintiffs in both causes will rely in the prosecution of their appeal to the Supreme Court of the United States from the final decree of this Court entered June 5, 1946.

The District Court erred:

(1) In holding and deciding that two of the judges of the statutory three judge court after hearing by the three judges, and thereafter one of the judges becoming ill and unable to participate further in the case, can determine the case and make findings of fact, and conclusions of law and enter a final decree dismissing said cases; where the statute (28 U. S. C. A. 47) provides that in proceedings of this character, the cause shall be heard and determined by a court of three judges of whom a majority shall concur in the judgment.

(2) In finding that on July 9, 1945, the Commission made and entered its order covering both proceedings, I. & S. Docket No. 5139, and Docket No. 28881; whereas said order of the Commission was entered only in I. & S. Docket No. 5139.

[fol. 135] (3) In finding that the Commission found that the present rates of the railroads were unlawful in certain respects, and in finding that the Commission pursuant to its statutory authority, under Section 15 of the Interstate Commerce Act prescribed interstate and intrastate rates to be published and collected by the carriers for the transportation of coal between the points involved in such proceedings and fixed relationships between certain producing areas in Illinois, Indiana and western Kentucky in lieu of the existing and proposed rates and relationships as stated in the tariffs under investigation;

Whereas the conclusion of the Commission that certain of the present rates from Indiana mines to certain Illinois destinations are unlawful is not supported by findings of fact or by evidence, and whereas the Commission did not prescribe any intrastate rates, or any interstate rates or rate relationships, but merely approved certain rates and

rate bases which it permitted the respondent carriers to publish if they so desired.

(4) In failing to hold and decide that the Commission entered no order for an investigation and hearing concerning the lawfulness of the existing rates on bituminous coal from mines in Indiana to Rockford or other destinations in northern Illinois or Beloit, Wisconsin;

(5) In failing to hold and decide that there is no evidence in the record before the Commission from which any comparisons can be made of the circumstances and conditions of transportation service involved in the transportation of coal from mines in the Brazil-Clinton and Linton-Sullivan groups in Indiana via the single line of the Chicago, Milwaukee, St. Paul & Pacific Railroad with the circumstances and conditions of the transportation service involved in the transportation of coal from mines on other railroads in those groups via joint line routes from such mines to said destinations, which rates the Commission concluded were [fol. 136] discriminatory in violation of Section 2 of the Interstate Commerce Act;

(6) In failing to hold and decide that there are no findings of fact in the Report of the Commission and no evidence that but for the lower single line rates of the Chicago, Milwaukee, St. Paul & Pacific Railroad, shipments of coal would have moved from mines on other roads in the Brazil-Clinton and Linton-Sullivan groups or any other groups in Indiana to Rockford, Freeport and other destinations in northern Illinois to which the Chicago, Milwaukee, St. Paul and Pacific Railroad maintains rates via its single line lower than the joint line rates maintained by other carriers serving origins in said groups;

(7) In failing to hold and decide that there are no findings of fact in the Report of the Commission and that there is no evidence in the record before the Commission that the Chicago, Milwaukee, St. Paul & Pacific Railroad effectively controls the rates to destinations in northern Illinois or Beloit, Wisconsin, from the mines served by other carriers in any Indiana group;

(8) In failing to hold and decide that there are no findings of fact in the Report of the Commission and no evidence in the record before the Commission that the rates published

by the Chicago, Milwaukee, St. Paul & Pacific Railroad from origins on its line in the Brazil-Clinton and Linton-Sullivan groups in Indiana accorded to said mines or shippers from such mines an undue preference or subjected any other shipper or mine in said groups or any receiver of freight at a destination on the line of the said Chicago, Milwaukee, St. Paul & Pacific Railroad in Illinois and undue prejudice or disadvantage;

(9) In failing to hold and decide that the Report of the Commission contains no finding of fact to support the conclusion that the rates approved in said Report to Rockford, Freeport or any specific destination in northern Illi-[fol. 137] nois are reasonable, non-discriminatory, non-prejudicial and non-preferential;

(10) In failing to hold and decide there are no findings of fact in the Report of the Commission and no evidence in the record before the Commission that the rates from the Boonville group in Indiana to any destination was unreasonable or that the rates from said Boonville group and the rates from the Princeton-Ayrshire group to any destination subject Boonville to an unjust discrimination or unduly prejudice the Boonville group or shippers therein or unduly prefer the Princeton-Ayrshire group and shippers therein;

(11) In failing to hold and decide that the order of the Interstate Commerce Commission in I. & S. Docket No. 5139 is unfair, arbitrary and discriminates against plaintiffs;

(12) In holding and deciding that the Commission's Report and Order entered July 9, 1945, were made within its statutory authority and are supported by adequate findings of fact;

(13) In holding and deciding that the findings of the Commission as set forth in the Report and Order of July 9, 1945, have substantial support in the record made before the Commission and afford a rational basis for its conclusions;

(14) In holding and deciding that the plaintiffs were accorded a full and fair hearing before the Commission and that the record made before the Commission discloses no error of law;

(15) In holding and deciding that the Report and Order of the Commission are lawful and valid in all respects;

(16) In dismissing plaintiffs' complaints.

(17) In failing to hold and decide that in I. & S. Docket No. 5139, a proceeding under Section 15(7) of the Inter-
[fol. 138] state Commerce Act, the Commission had no jurisdiction to make findings of fact or enter an order with respect to the relationship between the present rates of the Chicago, Milwaukee, St. Paul & Pacific Railroad via its direct line from origins on its line in the Brazil-Clinton and Linton-Sullivan groups to destinations on its line in Illinois, and the present rates of other carriers from other origins in said groups, or other Indiana groups to the same destinations in Illinois.

(18) In failing to hold and decide that in I. & S. Docket No. 5139 the Commission had no jurisdiction or authority to make any findings or enter any order with respect to the then present rates from mines in Indiana to destinations in Illinois, except as such existing rates might be affected indirectly by an order of the Commission in regard to the suspended rates, and that the Commission having ordered that such suspended rates be cancelled, it was without jurisdiction or authority to enter an order respecting the present rates from the Indiana mines to destinations in Illinois.

(19) In failing to hold and decide that the conclusion of the Commission that the existing rates from mines in Indiana to destinations in northern Illinois result in unjust discrimination as between shippers of coal transported in whole or in part by the Chicago, Milwaukee, St. Paul & Pacific Railroad or the Illinois Central Railroad, in violation of Section 2 of the Act, and in undue preference and prejudice as between the origins in the Brazil-Clinton and Linton-Sullivan districts and as between the respective Indiana districts, in violation of Section 3 (1) of the Act, and that the order to remove such alleged violations are not supported by findings of fact in the Report of the Commission or by substantial evidence in the record before the Commission;

[fol. 139] (20) In failing to hold and decide that the Southern Railway, having published no new rates from

points of origin in Indiana to Beloit, Wisconsin, and the Chicago, Milwaukee, St. Paul & Pacific Railroad, having published no new rates from points of origin served by it in Indiana via its line to Beloit, Wisconsin, the existing rates of said railroads were not in issue, and the Commission had no jurisdiction or authority in I. & S. Docket No. 5139 to make any finding with respect to said rates or with respect to the relation of the said rates and the proposed increased rates of other carriers serving mines in Indiana, or to enter any order respecting the said rates of the Southern Railway and the Chicago, Milwaukee, St. Paul & Pacific Railroad from Indiana origins to Beloit, Wisconsin;

(21) In failing to hold and decide that the Chicago, Milwaukee, St. Paul & Pacific Railroad and the Southern Railway had the right to initiate and maintain such rates as those carriers deemed proper until such time as the Commission found, after full hearing, on the basis of substantial evidence, that such rates violated one or more provisions of the Interstate Commerce Act and made such finding in a proceeding instituted by an order of the Commission for an investigation and hearing concerning the lawfulness of such rates;

(22) In failing to hold and decide that the Commission had no authority in I. & S. Docket No. 5139, on the evidence in that proceeding, to make any finding that the rates from the Boonville group should be on the same level as the rates from the Princeton-Ayrshire group in Indiana to any destination involved, or to approve such parity of rates;

(23) In failing to hold and decide that the Commission had no authority to approve rates or rate relationships from a number of origin groups to a number of individual destinations, where such rates vary from destination to [fols. 140-141] destination and the relationships of the rates from the different origin groups vary as between such destinations, on the basis of the average of the rates from each group to all of the destinations;

(24) In failing to hold and decide that the order of the Interstate Commerce Commission of July 9th, 1945 is not supported to basic or essential findings of the Commission, and is without rational support in the report of the Commission.

(25) In failing to hold and decide that the order of the Interstate Commerce Commission of July 9th, 1945 is in excess of the Commission's statutory powers and contrary to the provisions of the Interstate Commerce Act.

(26) In failing to enter a decree perpetually enjoining the order of the Interstate Commerce Commission in so far as such order requires the carriers to change the existing rates from mines in Indiana to destinations in Illinois, and n so far as said order authorizes and permits the carriers serving mines in Indiana to establish rates on the bases of the rates approved by the Commission.

Dated July 29, 1946.

Earl B. Wilkinson, J. Alfred Moran, Attorneys for Plaintiffs in Civil Action No. 1072. Carson L. Taylor, William L. Hunter, Attorneys for Plaintiff in Civil Action No. 1076.

[fols. 142-150] In United States District Court

No. 1072 Civil—No. 1076 Civil

Order Allowing Appeal—August 1, 1946

In the above entitled causes the Ayrshire Collieries Corporation, a corporation, Big Ben Collieries, Inc., a corporation, Birch Creek Coal Company, Inc., a corporation, Blackfoot Coal & Land Corporation, a corporation, Blackhawk Coal Corporation, a corporation, Walter Bledsoe & Company, a corporation, Boonville Coal Sales Corporation, a corporation, Central Indiana Coal Company, Inc., a corporation, The Enos Coal Mining Company, a corporation, Glendora Coal Company, a corporation, Hickory Grove Coal Mining Corporation, a corporation, Ingle Coal Corporation, a corporation, Knox Consolidated Coal Corporation, a corporation, Linton Summit Coal Company, Inc., a corporation, Little Betty Mining Corporation, a corporation, Mariah Hill Super Block Coal Company, a corporation, The Maumee Collieries Company, a corporation, Princeton Mining Company, a corporation, Pyramid Coal Corporation, a corporation, Sherwood-Templeton Coal Company, a corporation, Snow Hill Coal Corporation, a corporation, Standard Coal Company, a corporation, Paul

E. Horton, doing business as Hill Coal Company, H. A. Siepman, doing business as H. A. Siepman Coal Company, and Coal Trade Association of Indiana, a voluntary association, plaintiffs in the above entitled Cause No. 1072, and Chicago, Milwaukee, St. Paul & Pacific Railroad Company, plaintiff in the above entitled cause No. 1076, which said causes had been consolidated for all purposes by an order of this Court, having made and filed their petition jointly and severally, praying an appeal to the Supreme Court of the United States from the final decree of this Court in said causes entered June 5th, 1946, and having also made and filed an assignment of errors and a statement [fol. 151] of jurisdiction, and having in all respects conformed to the statute and rules of Court in such case made and provided, it is

Ordered and Decreed that the appeals be, and the same are hereby, allowed as prayed for, upon plaintiffs in cause No. 1072 giving bond for costs in the amount of $500.00, and plaintiff in cause No. 1076 giving bond for costs in the amount of $500.00, and the bonds for said sums by the plaintiffs in said respective causes, submitted to the Court with said petition for appeal, be and the same are hereby approved.

(Signed) J. Earl Major, United States Circuit Judge.

[fol. 152-161] Bonds on appeal for $500.00 approved and filed Aug. 1, 1946 omitted in printing.

[fols. 162-165] Citation in usual form filed Aug. 1, 1946, omitted in printing.

[fol. 166] In United States District Court

No. 1072 Civil. No. 1076 Civil

[Title omitted]

Notice to Attorney General of the State of Indiana—Filed August 1, 1946

To the Honorable James A. Emmert, Attorney General of the State of Indiana:

Pursuant to Urgent Deficiencies Act of October 22, 1913, 38 Stat. 220, you are hereby notified that the plaintiff in Cause No. 1076, Chicago, Milwaukee, St. Paul & Pacific

Railroad Company, and plaintiffs in Cause No. 1072, Ayrshire Collieries Corporation, a corporation, et al., have taken appeals to the Supreme Court of the United States from the [fols. 167-168] final decree of the United States District Court for the Southern District of Indiana, Indianapolis Division, entered June 5th, 1946, and the order allowing the appeal makes the same returnable within forty days from the date thereof.

(S.) Carson L. Taylor, William L. Hunter, Attorneys for Chicago, Milwaukee, St. Paul & Pacific Railroad Company, in Cause No. 1076. Earl B. Wilkinson, J. Alfred Moran, Attorneys for Ayrshire Collieries Corporation, a Corporation, et al., plaintiffs in Cause No. 1072.

Service of a copy of the foregoing notice is hereby acknowledged this 2nd day of August 1946.

(S.) James A. Emmert, Attorney General of the State of Indiana, by Thomas L. Webber, Deputy Attorney Geenral of Indiana.

[fol. 169] IN UNITED STATES DISTRICT COURT

No. 1072 Civil. No. 1076 Civil

[Title omitted]

NOTICE OF APPEAL—Filed August 12, 1946

To the United States of America, defendant and Interstate Commerce Commission, et al., intervening defendants.

Please take notice that, pursuant to the statutes and rules of court in such case made and provided, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, plaintiff in cause in Civil No. 1076, and Ayrshire Collieries Corporation, a corporation, et al., plaintiffs in cause Civil No. 1072, and each of them do hereby appeal to the Supreme Court of the United States from the final order and decree of the District Court made and entered on the 5th day of June 1946, which dismissed the bill of complaint in each of the above entitled causes, which complaints sought to have set aside, annulled, suspended and permanently enjoined a certain order of the Interstate Commerce Commission in the proceeding entitled "I. & S. Docket No. 5139, Coal

to Beloit, Wisconsin, and Northern Illinois," entered July 9, 1945, wherein the Commission ordered the respondent to [fols. 170-174] the proceedings before it to cease and desist discrimination and undue prejudice and preference in the rates from certain origins on the Chicago, Milwaukee, St. Paul & Pacific Railroad, and on the Illinois Central Railroad in certain groups of mines in Indiana to Rockford and other destinations on the line of said Chicago, Milwaukee, St. Paul & Pacific Railroad Company and Illinois Central Railroad, in Illinois, and permanently suspending the proposed new rates involved in said proceeding granted permission to the respondent carriers to publish rates approved by the Commission in its report in said proceeding.

Dated August 1st, 1946.

(S.) Carson L. Taylor, W. L. Hunter, Attorneys for Chicago, Milwaukee, St. Paul & Pacific Railroad Company. Earl B. Wilkinson, J. Alfred Moran, Attorneys for Ayrshire Collieries Corporation, a corporation, et al.

[fol. 175] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 1072 Civil. No. 1076 Civil

[Title omitted]

PROOF OF SERVICE OF CITATION ON APPEAL—Filed August 12, 1946

Service of citation on appeal in the above causes was made upon the defendant, United States of America, and each of the intervening defendants by delivery of copy of said citation to the attorney for the United States and the attorneys for each of the respective intervening defendants, and service of said citation is duly acknowledged by the attorneys for said defendant and each of the intervening defendants, as evidenced by the receipts thereof which are hereto attached.

Dated August 9, 1946.

Earl B. Wilkinson, J. Alfred Moran, Attorneys for Ayshire Collieries Corporation, et al. Carson L. Taylor, William L. Hunter, Attorneys for Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

[fol. 176] ACKNOWLEDGMENT OF SERVICE OF CITATION ON APPEAL

We, the undersigned, acknowledge service of citation on appeal in the above entitled causes and receipt of copy of such citation.

Dated this 2nd day of August, 1946.

M. B. Holifield, Attorney for Railroad Commission of Kentucky. J. E. Marks, Attorney for Kentucky Coal Agency, Inc. Erli J. Zoll, Jr., Attorney for the Alton Railroad Company (Henry A. Gardner, Trustee) and other intervening railroads. Charles [fol. 177] W. Stodell, Attorney for Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau. C. B. Cardy, Attorney for Tecumseh Coal Company, Sunlight Coal Company, and Northern Illinois Coal Corporation.

[fols. 178-179] ACKNOWLEDGMENT OF SERVICE OF CITATION ON APPEAL

The undersigned acknowledges service of citation on appeal in the above entitled causes and receipt of copy of such citation.

Dated this 3rd day of August, 1946.

Richard A. Wood, Attorney for Belleville Fuels, Inc., and Fifth and Ninth Districts Coal Traffic Bureau.

[fols. 180-201] Service of a copy of the above citation on appeal is hereby acknowledged this 5 day of August, 1946.

J. Howard McGrath, Solicitor General for United States of America. E. M. Reidy, Attorneys for Interstate Commerce Commission.

[fol. 292] In United States District Court

No. 1072 Civil. No. 1076 Civil

[Title omitted]

Praecipe for Transcript of Record—Filed August 13, 1946

To the Clerk:

Please prepare a transcript of the record in the above entitled causes for the purpose of the appeals herein and filed and allowed, including therein the following papers and proceedings, to wit:

1. Bill of complaint of Ayrshire Collieries Corporation, et al., omitting exhibits.
2. Order convening statutory court.
3. Notice of filing complaint and proof of service.
4. Bill of complaint filed by Chicago, Milwaukee, St. Paul and Pacific Railroad Company, omitting exhibits.
5. Order convening statutory court.
6. Order of court consolidating Cause No. 1072, Civil, and Cause No. 1076, Civil, for all purposes.

[fol. 293] 7. Order assigning complaints for final hearing March 25, 1946.

8. Answer of defendant in Cause No. 1072.
9. Answer of defendant in Cause No. 1076.
10. Petition of Kentucky Coal Agency to intervene in both cases as a party defendant and order granting leave to intervene.
11. Petition of Railroad Commission of Kentucky for leave to intervene in both cases as a party defendant and order granting leave to intervene.
12. Petition of Alton Railroad Company, et al., to intervene in both cases as parties defendant and order granting leave to intervene.
13. Order granting leave to Interstate Commerce Commission to intervene in both cases.
14. Answer of Interstate Commerce Commission in both cases.
15. Petition of Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau to intervene as parties defendant in both cases and order granting leave to intervene in both cases.

16. Order vacating trial date and reassigning causes for trial for April 26, 1946.

17. Petition of Tecumseh Coal Company, et al., to intervene in both cases as parties defendant and order granting leave to intervene in both cases.

18. Answer of Railroad Commission of Kentucky and Kentucky Coal Agency, Inc., in both cases.

19. Petition to intervene as parties defendant of Belleville Fuels, Incorporated, and Fifth and Ninth Districts Coal Traffic Bureau and order granting leave to intervene in both cases.

20. Order assigning Honorable J. Earl Major, Judge of United States Circuit Court, to sit as District Judge.

[fol. 204] 21. Docket entry of April 22, 1946, re hearing and agreement of parties.

22. All appropriate docket entries in their proper order.

23. Findings of fact and conclusions of law filed by Judges Major and Igoe and final decree dismissing plaintiffs' complaints at plaintiffs' costs, filed June 3, 1946.

24. Plaintiffs' petition for appeal.

25. Assignment of errors.

26. Statement of jurisdiction on appeal.

27. Order allowing appeal and recitation of filing of bonds by plaintiffs in each case.

28. Citation on appeal.

29. Proof of service of citation on appeal.

30. Notice to Attorney General of the State of Indiana and proof of service.

31. Notice of appeal and proof of service.

32. Notice under Rule 12 of the Rules of the Supreme Court of the United States and proof of service.

33. The following portion of the record of proceedings before the Interstate Commerce Commission in I. & S. Docket No. 5139, which consists of:

(a) Protest and request for suspension of Coal Trade Association of Indiana, dated July 14, 1942.

(b) Order of Interstate Commerce Commission dated July 30, 1942, suspending certain tariffs.

(c) Petition on behalf of Illinois Railroads dated August 12, 1942, filed with Interstate Commerce Commission August 15, 1942.

(d) Order of Interstate Commerce Commission in Docket No. 28881, dated September 9, 1942.

[fol. 205] (e) Petition of Railroad Commission of Kentucky to intervene in I. & S. Docket No. 5139.

(f) Petition of Kentucky Coal Agency, Inc. to intervene in I. & S. Docket No. 5139.

(g) Report and order of Interstate Commerce Commission issued July 9, 1945.

(h) Petition for reconsideration, etc. filed by Coal Trade Association of Indiana, filed September 27, 1945.

(i) Petition of Chicago, Milwaukee, St. Paul and Pacific Railroad Company for reconsideration filed September 24, 1945.

(j) Order of Interstate Commerce Commission of October 5, 1945, extending effective date of order of July 9, 1945, to December 20, 1945.

(k) Order of Interstate Commerce Commission dated November 13, 1945, denying petitions for reconsideration filed by Coal Trade Association of Indiana and Chicago, Milwaukee, St. Paul and Pacific Railroad Company and extending effective date of order of July 9, 1945, to January 21, 1946.

(l) Order of Interstate Commerce Commission dated December 6, 1945, extending effective date of order of July 9, 1945, to February 8, 1946.

(m) Order of Interstate Commerce Commission dated December 29, 1945, extending effective date of order of July 9, 1945, to April 8, 1946.

(n) Order of Interstate Commerce Commission dated February 28, 1946, extending effective date of order of July 9, 1945, to May 8, 1946.

(o) Order of Interstate Commerce Commission dated March 21, 1946, extending effective date of order of July 9, 1945, to July 8, 1946.

[fols. 206-208] (p) Narrative transcript of testimony before the Interstate Commerce Commission in I. & S. Docket No. 5139 and Docket No. 28881, which is filed herewith, in lieu of the transcript of hearing before the Interstate Commerce Commission in said dockets..

(q) Exhibits Nos. 1 to 103, both inclusive, and 106 to 118, both inclusive, introduced in evidence before the Interstate Commerce Commission in I. & S. Docket No. 5139.

(r) The following tariffs introduced in evidence as Exhibit No. 8 in the hearing before the District Court:

(1) Baltimore & Ohio Railroad Company Supplement No. 34 to I. C. C. Tariff No. WL-10705.

(2) Chicago & Eastern Illinois Railroad Company Supplement No. 18 to I. C. C. Tariff No. 2.

(3) Chicago, Indianapolis and Louisville Railway Company Supplement No. 20 to I. C. C. Tariff No. 4724.

(4) Chicago, Milwaukee, St. Paul and Pacific Railroad Company Supplements Nos. 27 and 28 to I. C. C. Tariff No. E-7246.

(5) Illinois Central Railroad Company Supplements Nos. 10 and 12 to I. C. C. Tariff No. H-1802.

(6) New York Central Railroad Company Supplements Nos. 54 and 56 to I. C. C. Tariff No. 164.

(7) Pennsylvania Railroad Company Supplement No. 51 to I. C. C. Tariff No. 2387.

(8) Southern Railway Company Supplement No. 33 to I. C. C. Tariff No. C-2230.

34. This praecipe for a record.

(S.) Earl B. Wilkinson, J. Alfred Moran, Attorneys for Ayrshire Collieries Corporation, et al. Carson L. Taylor, William L. Hunter, Attorneys for Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

[fol. 209] In United States District Court

[Title omitted]

[File endorsement omitted]

No. 1072 Civil—No. 1076 Civil

Proof of Service of Notice of Filing of Praecipe for Transcript of Record—Filed August 17, 1946

Plaintiffs in the above entitled causes filed Praecipe for transcript of record on appeal in the above causes on August 13, 1946, and served notice of such filing, together with a copy of such praecipe, upon the defendant and each

of the intervening defendants in said causes, receipt of which notice and copy of praecipe was duly acknowledged by the defendant on August 14, 1946, and by the various intervening defendants on either August 13, 1946 or August 14, 1946, which said receipts are hereto attached.

Earl B. Wilkinson, J. Alfred Moran, Attorneys for Ayrshire Collieries Corporation, et al. Carson L. Taylor, William L. Hunter, Attorneys for Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

[fol. 210] NOTICE OF FILING OF PRAECIPE FOR TRANSCRIPT OF RECORD

To Defendants and Intervening Defendants:

Please Take Notice that the plaintiffs in the above entitled causes have filed praecipe for transcript of record on appeal with the Clerk of the District Court, this 13th day of August, 1946, a copy of which praecipe is herewith served upon you.

Earl B. Wilkinson, J. Alfred Moran, Attorneys for Ayrshire Collieries Corporation, et al. Carson L. Taylor, William L. Hunter, Attorneys for Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

Received a copy of the above notice and of the praecipe [fol. 211] for transcript of record therein mentioned, this 13th day of August, 1946.

J. E. Marks, Attorney for Kentucky Coal Agency, Inc.; E. J. Zoll, per A. J. O'Brien, Jr., Attorney for The Alton Railroad Company (Henry A. Gardner, Trustee), and other intervening railroads; Charles W. Stodell, Attorney for Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau; C. B. Cardy, Attorneys for Tecumseh Coal Company, Sunlight Coal Company and Northern Illinois Coal Corporation; M. B. Holifield, Attorney for Railroad Commission of Kentucky.

[fol. 212] NOTICE OF FILING OF PRAECIPE FOR TRANSCRIPT OF RECORD

To Defendants and Intervening Defendants:

Please Take Notice that the plaintiffs in the above entitled causes have filed praecipe for transcript of record on appeal with the Clerk of the District Court, this 13th day of August, 1946, a copy of which praecipe is herewith served upon you.

Earl B. Wilkinson, J. Alfred Moran, Attorneys for Ayrshire Collieries Corporation, et al.; Carson L. Taylor, William L. Hunter, Attorneys for Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

Received a copy of the above notice and of the praecipe [fol. 213] for transcript of record therein mentioned, this 14th day of August, 1946.

Richard A. Wood, Attorneys for Belleville Fuels, Inc., and Fifth and Ninth Districts Coal Traffic Bureau.

[fol. 214] NOTICE OF FILING OF PRAECIPE FOR TRANSCRIPT OF RECORD

To Defendants and Intervening Defendants:

Please Take Notice that the plaintiffs in the above entitled causes have filed praecipe for transcript of record on appeal with the Clerk of the District Court, this 13th day of August, 1946, a copy of which praecipe is herewith served upon you.

Earl B. Wilkinson, J. Alfred Moran, Attorneys for Ayrshire Collieries Corporation, et al.; Carson L. Taylor, William L. Hunter, Attorneys for Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

Received a copy of the above notice and of the praecipe [fols. 215-232] for transcript of record therein mentioned, this 14 day of August, 1946.

J. Howard McGrath, Solicitor General for United States of America; E. M. Reidy, Attorney for United States Commerce Commission.

[fol. 233] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil No. 1072 Civil No. 1076

APPELLEE'S PRAECIPE DESIGNATING ADDITIONAL PORTIONS OF THE RECORD TO BE INCLUDED IN RECORD ON APPEAL—Filed August 19, 1946

To the Clerk of the Above-Named Court:

You will please include, in preparing the record on appeal in the above-entitled cause for transmittal to the Clerk of the Supreme Court of the United States pursuant to the appeal heretofore taken, in addition to such portions of the record as have been designated by appellants, but without duplication, the following:

1. The entire record before the District Court, including all evidence and exhibits received in evidence at the trial of the cause, including the entire record of proceedings before the Interstate Commerce Commission in I. & S. Docket No. 5139 and Docket No. 28881, including transcript of oral testimony, and all documents and exhibits received in evidence, at proceedings before the Commission.

[fol. 234] 2. Appellee's motion to affirm.

3. This praecipe.

4. Clerk's certificate.

This 16th day of August, 1946.

(Signed) J. Howard McGrath, Solicitor General; Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission.

I certify that a copy of the foregoing praecipe was this day mailed to the counsel for appellants.

(Signed) Edward Dumbauld, Special Assistant to the Attorney General.

Aug. 16, 1946.

[fol. 235] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 236-239] PETITIONERS' EXHIBIT No. 1

[fol. 240] BEFORE THE INTERSTATE COMMERCE COMMISSION

PROTEST AGAINST AND REQUEST FOR SUSPENSION OF PROPOSED RATES ON BITUMINOUS COAL FROM MINES IN INDIANA TO BELOIT, WISCONSIN, AND DESTINATIONS IN NORTHERN ILLINOIS—July 14, 1942

[fol. 241] Protestant, Coal Trade Association of Indiana, is a voluntary organization composed of companies operating bituminous coal mines in each of the four major coal freight rate groups in the State of Indiana. Members of said Association produce approximately ninety (90) per cent of the coal shipped by rail from mines in the State of Indiana.

All of the carriers serving the mines within the State of Indiana have filed tariffs effective August 2, 1942, proposing changes in the rates on bituminous coal (1) to Beloit, Wisconsin, and involved intermediate points; (2) to destinations in Northern Illinois; the only exception being the Southern Railway Company which have not changed their rates to Beloit. Most of such changes are increases in the present rates, and a few are reductions.

There is attached hereto as Appendix A, and made a part hereof, a list of the tariff Interstate Commerce Commission numbers, showing by specific reference the item numbers of the rates herein protested and sought to be suspended.

Carriers that serve mines in Illinois likewise have published tariffs effective August 2, 1942, making advances and reductions in the present rates on bituminous coal from the coal origin groups within the State of Illinois, to [fol. 242] these same destinations and to additional destinations; the advances and reductions being uniform as between said groups, except to short-haul points.

The rates herein protested, if permitted to become effective, would be in violation of Sections 1, 3, and 13 of the Interstate Commerce Act, in that: (a) the rates would be unreasonable; (b) the rates would create undue prejudice to shippers of coal from all origin groups in Indiana and undue preference in favor of shippers of coal in interstate and intrastate commerce from all origin groups in Illinois; (c) the rates would create undue preference in favor of some Indiana shippers, and an undue prejudice

against other Indiana shippers of coal from Indiana mines to Beloit, Wisconsin and involved intermediate points.

Protestant, Coal Trade Association of Indiana, respectfully petitions that the tariffs shown in Appendix A hereof, and the rates therein referred to by item number be suspended:

1. Because the present rates are in excess of reasonable maximum rates, and the proposed rates would be unreasonable in violation of Section 1 of the Interstate Commerce Act.

2. Because the proposed rates would unduly prejudice members of Protestant who operate mines in each of the four major groups in Indiana, i. e. Brazil-Clinton, Linton-Sullivan, Princeton-Ayrshire and Boonville, in respect to the shipment of coal to certain destinations in northern Illinois and to Beloit, Wisconsin and involved intermediate points, and would unduly prefer producers of coal in the State of Illinois shipping to some destinations in interstate commerce and to other destinations in interstate and intrastate commerce in violation of Sections 3 and 13 of the Interstate Commerce Act.

[fol. 243] 3. Because the proposed rates to Beloit and involved intermediate points would unduly prefer those members of Protestant who operate mines in the Brazil-Clinton and Linton-Sullivan Groups on the CMSTP&P Railroad and Illinois Central Railroad in Indiana, and unduly prejudice those members of Protestant who operate mines on other railroads in the Brazil-Clinton and Linton-Sullivan Groups and all mines, except those on the Southern Railway in the Princeton-Ayrshire Group in Indiana, in violation of Section 3 of the Interstate Commerce Act.

Grounds of Protest

Grounds upon which Protestant relies in support of its protest, are as follows:

To Beloit, Wis., and Intermediate Points.

(a) The present rates for the transportation of bituminous coal from Indiana to Beloit, and involved intermediate points, are not less than reasonable maximum rates. The proposed increases in those rates would be unreason-

able and excessive, in violation of Section 1 of the Interstate Commerce Act. Under the provisions of the Act, the burden of the proof is upon the carriers to justify these advances; mere publication of the rates in the tariffs does not satify the burden imposed by the Act.

(b) The proposed rates to Beloit and involved intermediate points would subject the producers and shippers of coal from Indiana to an undue prejudice and accord to the producers and shippers of coal from Illinois an undue preference, in violation of Section 3 of the Interstate Commerce Act. The present differential to Beloit of 30 cents per ton, Brazil-Clinton under Southern Illinois, would be reduced to 13 cents per ton; the present differential Linton-Sullivan under Southern Illinois would be reduced from 20 cents to [fol. 244] 8 cents and the present differential Princeton-Ayrshire under Southern Illinois would be reduced from 13 cents to 1 cent. It should be noted that this is brought about because no change is proposed from any of the Illinois Groups, while increases are proposed in the rates from all Indiana Groups except Boonville.

The New York Central Railroad and the C&EI Railroad serve the Southern Illinois, Springfield and Danville Groups in Illinois and also serve the Brazil-Clinton, Linton-Sullivan and Princeton-Ayrshire Groups in Indiana. The average distance from mines on the NYC Railroad in the Brazil-Clinton Group to Beloit is 125 miles shorter via short tariff routes than from mines on the NYC Railroad in Southern Illinois. From mines on the C&EI Railroad in the Brazil-Clinton Group, the distance is shorter than from mines on the C&EI in Southern Illinois by 138 miles. For those differences in distance it is proposed to reduce the differential Brazil-Clinton under Southern Illinois from 30 to 13 cents per ton.

From mines on the NYC Railroad in the Princeton-Ayrshire Group the difference in distance compared with Southern Illinois is 33 miles in favor of Princeton-Ayrshire. From mines on the C&EI in the Princeton-Ayrshire district the distance is shorter than from mines on the C&EI in Southern Illinois by 47 miles. For these differences in distance the carriers propose to reduce the differential Princeton-Ayrshire under Southern Illinois from 13 cents to 1 cent per ton.

Resulting rates subject shippers of coal in the Indiana Groups to undue prejudice and accor the shippers of coal in Illinois an undue preference into this market.

[fol. 245] To all of Eastern Iowa, Southern Minnesota, and Western Wisconsin, the rate relationship between the Indiana Groups, on the one hand, and the Illinois Groups, on the other has been predicated on a differential relationship Brazil-Clinton 30 cents per ton under the rates from Southern Illinois, with the rates from the other Indiana Groups constructed on their standard differentials over the rates from the Brazil-Clinton Group and the rates from the other Illinois Groups constructed on their established differentials under the rates from Southern Illinois. There is no substantial difference between the sifuation existing at Beloit, Wisconsin and that existing in other points in Western Wisconsin, Eastern Iowa, and Minnesota in respect to the relationship of distance, competition or any other factors affecting rate or rate relationships. *Illinois Coal Traffic Bureau vs. A. & W. Ry. Co., et al.*, Docket No. 25595, reported in 204-ICC-225, involved the relationship between the rates from Southern Illinois, the base group in Illinois, and the rates from Indiana Groups to Wisconsin, Eastern Iowa, and Minnesota, *including Beloit, Wisconsin.* After a thorough hearing in which all angles of the situation were covered by evidence and after full and complete consideration by the Commission, the Commission concluded as follows:

"Upon all of the facts presented, we believe that the rate relation between southern Illinois and the Indiana groups here assailed is fair and reasonable to all concerned."

"We find that the rates assailed are not unduly prejudicial. The complaint will be dismissed."

[fol. 246] If the relationship existing in the territory involved in that case was fair and reasonable to all concerned it is manifest that the proposal of respondents disrupting the relationships at Beloit, Wisconsin would be unfair and unreasonable. It would cause great confusion in the rate structure upon which the business of all these producing groups have been built. The proposals would injure not only the producers in Indiana but the consumers of coal at Beloit, and would exclude from that market much of the coal produced in Indiana. Such a result would manifestly be contrary to the purpose of Section 15 (a) 2 of the

Interstate Commerce Act. Differential adjustments have been maintained for years to permit the orderly movement of coal from competing producing districts. Coal rates have never been maintained with primary regard to distance and no reason exists at the present time for disregarding this fundamental principle of coal rates.

(c) The rates from mines in Indiana for many years have been constructed upon a fixed differential basis to northern Illinois, Wisconsin, Minnesota, Iowa, and other destination territory. Brazil-Clinton is the base group. The rates from the Linton-Sullivan Group to destinations in northern Illinois are, in most instances, 5 cents per ton over the rate from the Brazil-Clinton Group, and to the balance of the northern Illinois points and to points in Wisconsin (including Beloit), Minnesota, and Iowa, the rates from the Linton-Sullivan Group are 10 cents per ton over Brazil-Clinton Group. The rates from the Princeton-Ayrshire Group have been and are 7 cents per ton over the rates from the Linton-Sullivan Group to all of this territory. The rates from Boonville Group have been, and are, 3 cents over the rates from the Princeton-Ayrshire [fol. 247] Group to all destination territory.

To Beloit the present differential from all mines in the Linton-Sullivan Group is 10 cents per ton over the rates from all mines in the Brazil-Clinton Group. Under the rates proposed, the rates from mines on the CMStP&P Railroad in the Brazil-Clinton Group remain unchanged but the rates from mines located on other railroads would be increased from $2.10 to $2.27 per ton. Likewise, under the proposed tariffs, the rates from mines in the Linton-Sullivan Group on the CMStP&P and Illinois Central would remain unchanged but the rates from mines on the other railroads would be increased from $2.20 to $2.32 per ton. This would make the differential Linton-Sullivan over Brazil-Clinton 22 cents per ton from mines on the C&EI, CI&L, NYC, and Penna Railroads in the Linton-Sullivan Group over the rates from mines on the CMStP&P Railroad in the Brazil-Clinton Group. From the Princeton-Ayrshire Group the present differential from all mines is 7 cents per ton over the rates in effect from all mines in the Linton-Sullivan Group, but under the proposed tariffs the rates from mines in the Princeton-Ayrshire Group will be 19 cents per ton over the rates in effect from mines

on the CMStP&P and Illinois Central Railroads in the Linton-Sullivan Group. The proposed rates, in addition to disrupting the differential between the Indiana Groups, also disrupts the parity which has existed in the rates from all the mines in the Brazil-Clinton Group and from all mines in the Linton-Sullivan Group.

The proposed rates should be suspended because of the undue prejudice to which the producers and shippers of coal on railroads other than the CMStP&P Railroad and Illinois Central Railroad would be subjected, and the undue preference that would be accorded to producers of coal in Indiana on the CMStP&P Railroad and Illinois Central Railroad:

[fol. 248] To Beloit, Wisconsin and the affected intermediate points, the proposed rates are shown as published in compliance with the Order of the Interstate Commerce Commission in I. C. C. Docket No. 25419, and related cases, (Mimeographed) decided March 3, 1942. In that proceeding, the Commission found that the rates on bituminous coal from mines in Illinois, Indiana and Western Kentucky to Beloit were unduly prejudicial to Beloit and unduly preferential to Rockford, Illinois, to the extent that they exceeded the rates from the same origins to Rockford by more than 15 cents per ton. The present rates from the Illinois Groups to Beloit exceed those to Rockford by 30 cents per ton. From Indiana the present rates from mines on the CMStP&P Railroad in the Brazil-Clinton District and from mines on the CMStP&P and Illinois Central Railroad in the Linton-Sullivan District exceeded those to Rockford by 30 cents per ton, and from the other Indiana mines the rates to Beloit exceeded those to Rockford by 13 cents per ton from the Brazil-Clinton District and by 18 cents per ton from the mines in the other districts. The carriers have elected to comply with the order of the Commission by increasing the present rates to Rockford 15 cents per ton and to publish rates to Beloit based 15 cents per ton over the proposed Rockford rates. This results in no change in the rates from all the Illinois Groups or from mines in Indiana on the CMStP&P Railroad and Illinois Central Railroad, but from other mines in Indiana it results in increases ranging from 12 to 17 cents per ton. There is nothing in the order, however, which authorizes any increase in the rates from Indiana, nor is there anything which authorizes the disruption of existing origin relationships which are of long standing.

[fol. 249] The result of this is a complete disruption of the differential relationship which has existed for many years and which was found proper in Illinois Coal Traffic Bureau, *supra*. In the original hearing in Docket No. 25419, reported in 195-ICC-365, the Commission found that the rates on bituminous coal from the mines in Illinois, Indiana, and Western Kentucky to Beloit were unduly prejudicial to Beloit and unduly preferential to Rockford to the extent that they exceeded the rates from the same origins to Rockford by more than 25 cents per ton. The carriers in complying with this order reduced the rate from Southern Illinois, the base group in Illinois, to 25 cents over the rate in effect at that time to Rockford and from the other groups established rates based on the existing origin differentials in effect at that time, and which had been in effect for a great many years and is in effect today. In the last decision in this case, the carriers have elected to comply with the order in such a way as to disrupt relationships between the origin groups in Illinois and Indiana and between Indiana Groups themselves.

The question of rates and differentials to Beloit, Wisconsin and destinations in norther Illinois, was before the Interstate Commerce Commission in I&S Docket No. 4368, coal to Illinois and Wisconsin. In their report, dated April 10, 1939 and reported in 232-ICC-151, the Commission found that the rates proposed by the carriers were justified except from the Princeton-Ayrshire and Boonville Groups in Indiana. In that case the carriers had proposed to Beloit, Wisconsin, Rockford and Freeport, Illinois the same rates from the Princeton-Ayrshire Group as proposed from the Southern Illinois Group, and from the Boonville Group 3 cents over Southern Illinois. The Commission in their [fol. 250] decision found that the proposed differentials would be unduly prejudicial to shippers and producers in the Princeton-Ayrshire and Boonville Groups, and unduly preferential of their competitors in the other Indiana and the Illinois Groups, and suggested the filing of new schedules that would continue in effect the standard differentials from those Groups, i.e., from the Princeton-Ayrshire Group, 7 cents over the rates from the Linton-Sullivan Group, and from the Boonville Group 3 cents over the rates from the the Princeton-Ayrshire Group. The rates now proposed to Beloit and involved intermediate points would make the differential Princeton-Ayrshire over the lowest Linton-

Sullivan rate 19 cents per ton in lieu of 7 cents. It would also change the differential between the Princeton-Ayrshire and the Southern Illinois Groups, from 13 cents to 1 cent over Southern Illinois.

To Northern Illinois Points

(a) The present rates for the transportation of bituminous coal from Indiana to destinations in northern Illinois, are not less than reasonable maximum rates. Proposed increases in those rates, some of which are as much as 45 cents per ton, would result in rates which would be unreasonable and excessive, in violation of Section 1 of the Interstate Commerce Act.

(b) The proposed rates to northern Illinois points would subject the producers and shippers of coal from Indiana to an undue prejudice and accord to the producers and shippers of coal from Illinois who ship in interstate and intrastate commerce within the State of Illinois an undue preference, in violation of Sections 3 and 13 of the Interstate Commerce Act. What has already been said in regard to the relation-
[fol. 254] ship and rates as between Illinois and Indiana to Beloit is equally true in respect to the interstate and intrastate rates within the State of Illinois, in comparison with the interstate rates from Indiana. To many of the destinations involved, the disruption of the differential relationship first occurred in 1930 when the Illinois Commerce Commission ordered reductions in the rates from the Illinois Groups, and the carriers made no corresponding reductions in the rates from the Indiana Groups, and this situation still exists today, but to some of these destinations the carriers are now proposing to further disrupt the differential relationship between Illinois and Indiana.

This Commission has repeatedly ruled that a rate adjustment of long standing should not be disturbed except for urgent reasons; that such adjustments are presumably fair and ought not to be disrupted unless substantial justice requests such action. The protested rates would disturb and disrupt an adjustment of many years standing. This presents a situation where it is particularly proper for the Commission to suspend these rates to the end that there be no disturbance of an adjustment presumably fair and reasonable, unless it be shown by respondents by a full and complete record when urgent and substantial reasons exists for the proposed changes.

Wherefore, Protestant, Coal Trade Association of Indiana, on behalf of its members operating coal mines in the four major rate groups of Indiana, respectfully protests against the rates published to become effective August 2, 1942, enumerated in Appendix A, hereto attached, and prays that these rates be suspended and that this Commission institute an investigation of the propriety and legality of [fol. 252] the rates enumerated in Appendix A hereof, and that, after such hearing, said rates be permanently suspended and cancelled.

Respectfully submitted, Coal Trade Association of Indiana, by Harold V. Scott, Traffic Manager. E. B. Wilkinson, Attorney for Protestant.

Dated July 14, 1942.

Address of Protestant: 632 Cherry Street, Terre Haute, Indiana.

Address of Attorney: 231 South LaSalle Street, Chicago, Illinois.

[fol. 253] *Duly sworn to by Harold V. Scott. Jurat omitted in printing.*

[fol. 254] APPENDIX

List of Schedules, and the Rates Published therein, Against which Protest is made in the Petition in which Reference is made to this Appendix

Baltimore and Ohio Railroad

Supplement No. 34 to ICC No. WL-10705

Rates published from Groups 1 and 2 to all stations named therein.

Chicago and Eastern Illinois Railway

Supplement No. 18 to ICC No. 2

Rates published from Brazil-Clinton, Sullivan and Princeton Groups to all stations named therein.

Chicago, Indianapolis and Louisville Railway

Supplement No. 20 to ICC No. 4724

Rates published from the Linton District to stations—Index Nos. 5813 to 5885, inclusive; 5919; 6955 and 6957; 12713 to 12752, inclusive; 14221 to 14237, inclusive; 14274

to 14280, inclusive; 14295 to 14302, inclusive; 14369; 14373 to 14397, inclusive; 26388b; 26389 to 26396, inclusive; 26457 to 26473, inclusive.

Chicago, Milwaukee, St. Paul and Pacific Railroad

Supplement No. 27 to ICC No. B-7246

Rates published from the Clinton and Linton Districts to all stations named therein.

Supplement No. 28 to ICC No. B-7246

Rates published in Items 150-A, 155-A, and 160-A and 165-A on Page 4 thereof.

New York Central Railroad

Supplement No. 54 to ICC No. 164

Rates published from Terre Haute, Evansville, ES&N, Clay City and Petersburg Groups to the following stations —on C&NW Ry.: Index Nos. 90 to 165, inclusive; 235 to 295, inclusive; 315; 420; 4125 and 4130. To stations on the CGW Railway: Index Nos. 50 to 135, inclusive. To stations on the CMStP&P Railroad: Index Nos. 565 to 607, inclusive; 696 to 702, inclusive; 720 to 760, inclusive; 1020; 1050 to 1070, inclusive; 1085 to 1135, inclusive. To stations on the IC Railroad: 3025 to 3042, inclusive; 3050 to 3065, inclusive; 3150 to 3190, inclusive; and 3515.

[fol. 255] *Illinois Central Railroad*

Supplement No. 10 to ICC No. E-1802

Rates published from Groups 7 (Linton) and 8 (Evansville) to all stations named therein.

Pennsylvania Railroad

Supplement No. 51 to ICC No. 2387

Rates published from Groups 1, 2 and 3 to all stations named therein.

Southern Railway System

Supplement No. 33 to ICC No. C-2230

Rates published from Groups 2 and 3 to all stations named therein.

(Here follows 1 Photolithograph, side folio 256)

Statement Showing the Prior, Present and Proposed Rates from the Four Indiana Groups and Southern Illinois to Beloit, Wis., and Representative Destinations in Northern Illinois, Also the Differential Relationship Indiana Groups Versus Southern Illinois

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Destination	Rates															Differential Under Southern Illinois (Except as							
	Southern Illinois			Brazil-Clinton			Linton-Sullivan			#Princeton-Ayrshire			Boonville			Brazil-Clinton			Linton-Sullivan			Princ Ayrs	
	Prior	Pres.	Pro-posed	Prior	Pres.	Pro-posed	Prior	Pres.	Pro-posed	Prior	Pres.	Pro-posed	Prior	Pres.	Pro-posed	Prior	Pres.	Pro-posed	Prior	Pres.	Pro-posed	Prior	Pres
Beloit, Wis.	275	240	240	245	210	a/210 b/227	255	220	a/220 b/232	262	227	e/227 f/239	265	230	230	30	30	a/30 b/13	20	20	a/20 b/ 8	13	13
Rockford, Ill.	217	210	225	187	a/180 b/197	a/195 b/212	192	c/190 d/202	c/205 d/217	199	209	224	202	212	227	30	a/30 b/13	a/30 b/13	25	c/20 d/ 8	c/20 d/ 8	18	1
Freeport, Ill.	217	210	225	187	a/180 b/197	a/195 b/212	192	c/190 d/202	c/205 d/217	199	209	224	202	212	227	30	a/30 b/13	a/30 b/13	25	c/20 d/ 8	c/20 d/ 8	18	1
Dixon, Ill.	204	200	205	174	184	189	184	189	194	191	201	206	194	204	209	30	16	16	20	11	11	13	+ 1
Richardson, Ill.	204	205	205	174	184	189	179	189	194	186	196	201	189	199	204	30	21	16	25	16	11	18	9
Lanark, Ill.	217	225	225	187	195	a/195 b/200	192	200	a/200 b/205	199	207	212	202	210	215	30	30	a/30 b/25	25	25	a/25 b/20	18	18

\# - Does not include mines on the AW&W Ry
a/ - From CMSTP&PRR mines only
b/ - From other than CMSTP&PRR mines
c/ - From CMSTP&PRR and ICRR mines only
d/ - From other than CMSTP&PRR and ICRR mines
e/ - From Southern Ry mines only
f/ - From other than Southern Ry mines
◆ - Differential over Southern Illinois

(S-149)
7-18-42

20	21	22	23	24	25	26	27	28
Southern Illinois (Except as Noted)								
Linton-Sullivan			Princeton-Ayrshire			Boonville		
Prior	Pres.	Pro-posed	Prior	Pres.	Pro-posed	Prior	Pres.	Pro-posed
20	20	a/20 b/ 8	13	13	e/13 f/ 1	10	10	10
25	a/20 d/ 8	c/20 d/ 8	18	1	1	15	+ 2	+ 2
25	c/20 d/ 8	c/20 d/ 8	18	1	1	15	+ 2	+ 2
20	11	11	13	+ 1	+ 1	10	+ 4	+ 4
25	16	11	18	9	4	15	6	1
25	25	a/25 b/20	18	18	13	15	15	10

[fol. 257] At a session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D. C., on the 30th day of July, A. D. 1942

INVESTIGATION AND SUSPENSION DOCKET NO. 5139

COAL TO BELOIT, WIS. AND NORTHERN ILLINOIS

ORDER—July 30, 1942

It appearing, That there have been filed with the Interstate Commerce Commission tariffs containing schedules stating new individual and joint rates and charges, and new individual and joint regulations and practices affecting such rates and charges, to become effective on the 2nd day of August, 1942, and later, designated as follows:

The Alton Railroad Company:
Supplement No. 25 to I.C.C. No. 243;
The Atchison, Topeka and Santa Fe Railway Company:
Supplement No. 38 to I.C.C. No. 13094;
The Baltimore and Ohio Railroad Company:
Supplement No. 34 to I.C.C. No. WL-10705;
Supplements Nos. 40 and 42 to I.C.C. No. WL-10709;
Chicago & Eastern Illinois Railroad Company:
Supplement No. 18 to I.C.C. No. 2;
Chicago & Illinois Midland Railway Company:
Supplement No. 2 to I.C.C. No. B-292;
Chicago and Northwestern Railway Company
(Charles M. Thomson, Trustee):
Supplement No. 13 to I.C.C. No. 10934, and Supplement No. 12 to M.F.-I.C.C. No. 46.
Chicago, Burlington & Quincy Railroad Company;
Supplement No. 38 to I.C.C. No. 19670;
Chicago, Indianapolis and Louisville Railway Company
(L. F. DeRamus and Holman D. Pettibone, Trustees):
Supplement No. 20 to I.C.C. No. 4724;
Chicago, Milwaukee, St. Paul and Pacific Railroad Company
(Henry A. Scandrett, Walter J. Cummings, George I. Haight, Trustees):
Supplement No. 9 to I.C.C. No. B-7238;
Supplements Nos. 27 and 28 to I.C.C. No. B-7246;
Supplement No. 25 to I.C.C. No. B-7287;
The Chicago, Rock Island and Pacific Railway Company
(Frank O. Lowden and Joseph B. Fleming, Trustees):

Supplement No. 25 to I.C.C. No. C-13020;
Gulf, Mobile and Ohio Railroad Company:
Supplement No. 21 to I.C.C. No. 17;
Illinois Central Railroad Company:
Supplements Nos. 10 and 12 to I.C.C. No. E-1802;
Illinois Terminal Railroad Company:
Supplement No. 21 to I.C.C. No. 69;
Litchfield and Madison Railway Company:
Supplement No. 39 to I.C.C. No. 386;
Louisville and Nashville Railroad Company:
Supplement No. 48 to I.C.C. No. A-16428;
The Minneapolis & St. Louis Railroad Company
(L. C. Sprague, Receiver):
Supplement No. 31 to I.C.C. No. B-1028;
Missouri Pacific Railroad Company
(Guy A. Thompson, Trustee):
Supplement No. 24 to I.C.C. No. A-9487;
[fol. 258] The New York Central Railroad Company:
Supplements Nos. 54 and 56 to I.C.C. No. 164;
Supplement No. 3 to I.C.C. No. 182;
The Pennsylvania Railroad Company:
Supplement 51 to I.C.C. No. 2387;
Southern Railway Company:
Supplement No. 33 to I.C.C. No. C-2230;
Wabash Railway Company:
Supplements Nos. 57 and 59 to I.C.C. No. 7276;

It is ordered, That the Commission upon complaint, without formal pleading, enter upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in the said schedules contained in said tariffs, viz:

The Baltimore and Ohio Railroad Company:
Supplement No. 42 to I.C.C. No. WL-10709, on pages 2, 3 and 4 thereof, all provisions shown in connection with the reference mark 40 in a square;
Chicago, Burlington & Quincy Railroad Company:
Supplement No. 38 to I.C.C. No. 19670, on page 3 thereof, all provisions shown under the caption "SECTION 2"; pages 4, 5, 6, 8 and 9 thereof; pages 7 and 10 thereof, except the provisions shown in connection with the reference mark 35 in a square;
Chicago, Milwaukee, St. Paul and Pacific Railroad Company

(Henry A. Scandrett, Walter J. Cummings, George I. Haight, Trustees):

Supplement No. 28 to I.C.C. No. B-7246, page 4 thereof;

Gulf, Mobile and Ohio Railroad Company:

Supplement No. 21 to I.C.C. No. 17, on page 2 thereof, all provisions applicable in connection with Index Nos. 90 to 670 inclusive, Index No. 715, and Index Nos. 50 and 80; on page 3 thereof, all provisions applicable in connection with Index Nos. 82 to 135 inclusive, 565 to 870 inclusive, and 1050 to 1135 inclusive; on page 4 thereof, all provisions applicable in connection with Index Nos. 3025 to 3190 inclusive;

Louisville and Nashville Railroad Company:

Supplement No. 48 to I.C.C. No. A-16428, on page 2 thereof, all provisions applicable in connection with Station Nos. 28145 to 47040 inclusive; page 3 thereof, except the provisions shown in connection with Station Nos. 57935 to 58950 inclusive; on page 4 thereof, all provisions applicable in connection with Station Nos. 63285 to 104605 inclusive;

The Minneapolis & St. Louis Railroad Company (L. C. Sprague, Receiver):

Supplement No. 31 to I.C.C. No. B-1028, on page 7 thereof, all provisions applicable in connection with Index Nos. 5013 to 5123 inclusive, also 5195, 5196 and 5197; on page 9 thereof, Item No. 520-B;

The New York Central Railroad Company:

Supplement No. 54 to I.C.C. No. 164, page 2 thereof; page 3 thereof, except the provisions shown in connection with Index Nos. 1005, 1010 and 1015; page 4 thereof, except the provisions shown in connection with Index Nos. 1235 and 1505;

Supplement No. 56 to I.C.C. No. 164, on pages 4 to 7 inclusive thereof, all provisions shown in connection with the reference mark 54 in a square;

Supplement No. 3 to I.C.C. No. 182, on page 2, thereof, all provisions applicable in connection with Index Nos. 3045 to 3190 inclusive;

[fol. 259] Wabash Railroad Company:

Supplement No. 59 to I.C.C. No. 7276, on pages 10, 11, 20, 21, 22, 37 and 38 thereof all provisions shown in connection with the reference mark 57 in a square;

And the rates, charges, regulations and practices stated in all schedules contained in each of the other said tariffs and supplements named in this order.

It further appearing, That said schedules make certain increases and reductions in rates for the interstate transportation of bituminous coal, in carloads, and the rights and interests of the public appearing to be injuriously affected thereby, and it being the opinion of the Commission that the effective date of said schedules contained in said tariffs should be postponed pending said hearing and decision thereon;

It is further ordered, That the operation of the said schedules contained in said tariffs be suspended, and that the use of the rates, charges, regulations and practices therein stated be deferred upon interstate traffic until the 2nd day of March, 1943, unless otherwise ordered by the Commission, and no change shall be made in such rates, charges, regulations and practices during the said period of suspension unless authorized by the Commission.

It is further ordered, That the rates and charges and the regulations and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule until this investigation and suspension proceeding has been disposed of or until the period of suspension and any extension thereof has expired, unless authorized by the Commission.

It is further ordered, That a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission, and that copies hereof be forthwith served upon the carriers parties to said schedules and that said carriers parties to said schedules be, and they are hereby, made respondents to this proceeding.

And it is further ordered, That this proceeding be, and the same is hereby, assigned for hearing September 11, 1942, 9:30 o'clock, A. M., at the Sherman Hotel, Chicago, Ill., before Examiner Hall.

By the Commission, division 2.

(Seal) W. P. Bartel, Secretary.

[fol. 260] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. ——

In the Matter of Intrastate Rates on Bituminous Coal from Points in Illinois to Rockford, Freeport, Dixon and Other Points in Northern Illinois

PETITION ON BEHALF OF ILLINOIS RAILROADS—August 12, 1942

[fol. 261] To the Interstate Commerce Commission:

Your Petitioners,

The Alton Railroad Company,
The Atchison, Topeka and Santa Fe Railway Company,
The Baltimore and Ohio Railroad Company,
Chicago and Eastern Illinois Railroad Company,
Chicago & Illinois Midland Railway Company,
Chicago and North Western Railway Company (Charles M. Thomson, Trustee),
Chicago, Burlington & Quincy Railroad Company,
Chicago Great Western Railroad Company,
Chicago, Indianapolis and Louisville Railway Company (L. F. DeRamus and Holman D. Pettibone, Trustees),
Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings, and George I. Haight, Trustees),
The Chicago, Rock Island and Pacific Railway Company (Frank O. Lowden and Joseph B. Fleming, Trustees),
[fol. 262] The Cleveland, Cincinnati, Chicago and St. Louis Railway Company (The New York Central Railroad Company, Lessee),
Illinois Central Railroad Company,
Illinois Terminal Railroad Company,
Litchfield and Madison Railway Company,
Louisville and Nashville Railroad Company,
Missouri-Illinois Railroad Company (Guy A. Thompson, Trustee),
Missouri Pacific Railroad Company (Guy A. Thompson, Trustee),
The Pennsylvania Railroad Company,
Southern Railway Company,

Toledo, Peoria & Western Railroad (John W. Barriger, Federal Manager),
Wabash Railroad Company,

present this petition and respectfully represent and show unto the Commission as follows:

I

Your petitioners are corporations, or trustees or receivers of properties of corporations, organized and existing under the laws of the respective States in which they were incorporated. Each of your petitioners has been for many years past, and is now, engaged in operating lines of railroad within the State of Illinois and adjoining States, and has been, and is now, engaged in the business of transporting freight, including bituminous coal, in intrastate commerce between points within the State of Illinois, and in interstate commerce through the State of Illinois and between points in the State of Illinois and points in other States. Each of your petitioners is a common carrier of freight [fol. 263] by railroad, subject to the provisions of the Interstate Commerce Act, as amended. This petition is filed in pursuance of the provisions of the said Interstate Commerce Act, as amended, and in particular Sections 3 and 13 thereof.

II

By schedules filed to become effective August 2, 1942, your petitioners proposed generally increased rates on bituminous coal, carloads, from producing points in Illinois, Indiana, and west Kentucky, to Beloit, Wisconsin, Rockford, Freeport, Dixon, Illinois, and other destinations in a territory embracing a portion of the State of Illinois lying west and northwest of the Chicago district. The increases were proposed in an integrated rate adjustment including both interstate and intrastate rates.

The rates so published for application on Illinois intrastate traffic were suspended until November 30, 1942, by order of the Illinois Commerce Commission entered July 21, 1942, in its Docket No. 30935, *In the Matter of the Proposed Changes in Rates on Bituminous Coal Between Points in the State of Illinois*, a copy of which order is attached hereto as Appendix A. Those rates are generally the same

as the rates which the Illinois Commerce Commission found not justified July 28, 1939, in its docket No. 25667, plus the 10 cents per ton increase authorized by that commision by orders entered in 1937 and 1938 in its docket No. 23208, following a similar general increase in interstate rates authorized by the Interstate Commerce Commission in [fol. 264] *Ex Parte* No. 115, *General Commodity Rate Increases, 1937*, 223 I. C. C. 657, 229 I. C. C. 435, and plus the 5 cents per ton increase authorized by the Illinois Commission by order entered in 1942 in its docket No. 30546, following a similar general increase in interstate rates authorized by the Interstate Commerce Commission in *Ex Parte* No. 148, *Increased Railway Rates, Fares, and Charges, 1942*, 248 I. C. C. 545.

The increased rates published for application on interstate traffic moving to Rockford, Freeport, Dixon, and Beloit, are, with the exception of those from origin groups in Indiana, substantially the same as those approved by the Interstate Commerce Commission in I. & S. Docket No. 4368, *Coal to Illinois and Wisconsin*, 232 I. C. C. 151, decided April 10, 1939, plus the increases of 1937 and 1942 authorized in *Ex Parte* No. 115 and *Ex Parte* No. 148, referred to above. However, for reasons hereinafter set forth in paragraphs V and VI, your petitioners advised your Commission that they had no objection to the suspension of the proposed increased interstate rates. Your Commission thereafter, on July 30, 1942, under Investigation and Suspension Docket No. 5139, *Coal to Beloit, Wis., and Northern Illinois*, suspended the proposed increased interstate rates until March 2, 1943.

III

The intrastate rates on bituminous coal from Illinois origin groups to Rockford, Freeport, and Dixon continued in effect by reason of the refusal of the Illinois Commission [fol. 265] to permit the increases proposed to become effective, were published originally in compliance with maximum rate orders entered by the Illinois Commerce Commission in its docket No. 13558, *Chamber of Commerce of Freeport v. B. & O. R. R. et al.*, No. 13569, *Rockford Manufacturers and Shippers Association v. B. & O. R. R. et al.*, and No. 14009, *Sandusky Cement Company, et al. v. Illinois Central*

R. R. Co., et al.[1] The said orders, which became effective in 1930, are still outstanding and operative against your petitioners, and by reason of the refusal of the Illinois Commission to permit the proposed increased intrastate rates to become effective, the aforesaid orders require your petitioners to maintain for the intrastate transportation of bituminous coal from Illinois producing points to Rockford, Freeport, and Dixon rates not higher than the rates fixed therein, plus the general increases since authorized by the Illinois Commission and referred to previously herein.

[fol. 266] Under the statutes and laws of the State of Illinois the railroads operating in that State, including your petitioners, are without power to make effective and to charge for the intrastate transportation of freight within Illinois any rate suspended by the Illinois Commerce Commission, and they are required under heavy penalties to continue and observe the rates published and filed with the Illinois Commission in compliance with the maximum rate orders previously entered by that Commission.

---

[1] The orders in dockets Nos. 13558 and 13569 required the establishment of certain rates on coal from the Danville, northern Illinois, Fulton County, Peoria, Springfield, Centralia, Belleville, DuQuoin and southern Illinois groups to Rockford and Freeport. The effect of the order was to reduce the rates from practically all Illinois groups to Rockford and Freeport by 17 cents per ton, except that the rate from the northern Illinois group to Rockford and Freeport was reduced by 47 cents per ton. The substantial reduction required in the rate from the northern Illinois group to Rockford and Freeport necessitated a reduction in the rate from the same group to Dixon in order to avoid a departure from the long and short haul provisions of the Illinois Public Utilities Act.

The order in docket No. 14009 required the establishment of certain maximum rates on coal from the Springfield and southern Illinois groups to Dixon, Illinois, the effect of which was to reduce the rates from these groups by 14 cents per ton. In order to avoid departures from the long and short haul provisions of the Illinois Public Utilities Act, it was necessary in complying with the order for the carriers to reduce the rates from the DuQuoin, Belleville, and Centralia groups by 4 cents per ton.

IV

The intrastate rates on bituminous coal from Illinois groups to Rockford, Freeport, and Dixon continued in effect by reason of the refusal of the Illinois Commission to permit the increases proposed to become effective are generally the same[2] as the rates which this Commission in *Intrastate Rates on Bituminous Coal in Illinois*, 182 I. C. C. 537, 549, found to be "well below the reasonable level of rates in this territory." In that case, which resulted from a petition by Illinois railroads under Section 13 of the Interstate Commerce Act, as amended, this Commission did not require increases in the Illinois intrastate rates to Rockford, Freeport, and Dixon because of its finding therein that there was no discrimination against persons and localities in interstate commerce or against interstate commerce insofar as interstate rates from Indiana mines to those same destinations were concerned, the interstate rates from mines in [fol. 267] Indiana to the same destinations being on a level approximately the same as the level of the assailed intrastate rates. The Commission there said (182 I. C. C. 537, 564): "The assailed rates to Rockford, Freeport, and Dixon should not be found to be unlawful under section 13 of the act until and unless the interstate rates from Indiana groups to the same destinations are increased to a level more nearly commensurate with the general level of the rates on coal in this territory."

The interstate rates from Indiana mines to Rockford, Freeport, Dixon and related destinations which have been proposed by your petitioners and which have been suspended by your Commission in I. & S. 5139, generally speaking, are higher than the rates in effect at the time when the decision in *Intrastate Rates on Bituminous Coal in Illinois*, 182 I. C. C. 537, was rendered by this Commission, and are on a level more nearly commensurate with the general level of rates on coal in this territory.

V

By virtue of the orders of this Commission in *Illinois-Indiana Coal Cases*, 128 I. C. C. 265, and *West Kentucky Coal Bureau* v. *Illinois Central R. Co.*, 172 I. C. C. 279, rates

[2] Except for the general increases since authorized by the Illinois Commission and referred to previously herein.

on bituminous coal from producing points in west Kentucky to the destinations covered by this petition, and to other destinations as well, are required to be maintained at 35 cents over rates from producing points in southern Illinois. The increases in the interstate rates from west Kentucky [fol. 268] mines which have been proposed by your petitioners and which have been suspended in I. & S. 5139, cannot be made effective because like increases in the intrastate rates from southern Illinois mines to the same destinations have been prevented by the Illinois Commission from taking effect.

In *Fairbanks Morse & Co.* v. *Alton & Southern R. Co.*, 195 I. C. C. 365, 251 I. C. C. 181, commonly known as the *Beloit Case*, this Commission required that rates from Illinois, Indiana, and west Kentucky mines to Beloit, Wisconsin, should not exceed by more than 15 cents per ton the rates contemporaneously maintained from the same mines to Rockford, Illinois. Your petitioners' proposed continuance of the present rates from Illinois and west Kentucky mines to Beloit and their proposed increase in the rates from the same mines to Rockford, constitutes their effort to establish the required differential Rockford under Beloit and thus to comply with the order of this Commission in the *Beloit Case* without the sacrifice of revenue which would be entailed by the alternative method of complying with the order in the *Beloit Case* of making a reduction of 15 cents per ton in the rates to Beloit. In view of the order in the *Beloit Case*, retention of the present rates to Beloit cannot be effected because of the refusal of the Illinois Commission to permit the proposed increases in the intrastate rates from Illinois mines to Rockford to become effective.

[fol. 269]

VI

The adjustment of rates on bituminous coal from producing points in Illinois, Indiana, and west Kentucky to destinations in Illinois, Wisconsin, and other States is extremely sensitive. The delicate balance of this adjustment can be maintained only by concurrent readjustments of rates from producing points in the several States to competitive destinations. Because of the delicacy of this adjustment involving intrastate as well as interstate rates your petitioners, as heretofore stated, advised your

Commission that they had no objection to the suspension of the proposed increased interstate rates.

The suspension of the proposed increased intrastate rates by the Illinois Commission in its Docket No. 30935 caused your petitioners to fear that establishment of the increased interstate rates from Indiana mines, now suspended in I. & S. 5139, would jeopardize the movement of Indiana coal to this northern Illinois destination territory.

VII

The effect of the suspension by the Illinois Commerce Commission in its Docket No. 30935 is to require your petitioners to maintain for the intrastate transportation of bituminous coal from Illinois mines to Rockford, Freeport, Dixon, and other destinations in northern Illinois, rates materially lower in level [3] than (1) the level of inter- [fol. 270] state rates on bituminous coal found justified by the Interstate Commerce Commission in I. & S. 4368 for application via interstate routes from and to the same points, and (2) the level of interstate rates on bituminous coal found justified by the Interstate Commission in I. & S. 4368 for application from mines in southern Indiana and west Kentucky to the same destinations in Illinois. The aforesaid suspension by the Illinois Commission also results in your petitioners being forced to maintain for the intrastate transportation of bituminous coal from Illinois mines to those same Illinois destinations rates materially lower in level than the interstate rates on bituminous coal presently in effect from mines in Illinois to more distant destinations in eastern Iowa and southern Wisconsin, many of which rates have been prescribed or approved by this Commission. The low level of rates which your petitioners are thus required to maintain for the intrastate transportation of bituminous coal from Illinois mines to Rockford, Freeport, Dixon and related destinations in northern Illinois causes and creates an undue and unreasonable advantage, preference, and prejudice between persons and localities in intrastate commerce, on the one hand, and in interstate commerce, on the other hand, and causes an undue, un-

[3] Except for the general rate increases previously referred to herein which have taken effect on interstate as well as intrastate traffic.

reasonable, and unjust discrimination against interstate commerce and casts an undue burden upon interstate commerce, which is forbidden and declared to be unlawful by the Interstate Commerce Act, particularly Sections 3 and 13 thereof.

[fol. 271] VIII

Petitioners further show, as representative of the undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce, on the one hand, and in interstate commerce, on the other, the following situations resulting from the refusal of the Illinois Commission to permit to become effective increases in the intrastate rates on bituminous coal from Illinois mines to Rockford, Freeport, Dixon, and related destinations in northern Illinois:

1. *To Rockford, Illinois:*

(*a*) The intrastate rate on bituminous coal from mines in the southern Illinois group which by order of the Illinois Commission your petitioners are required to maintain is $2.10[4] per net ton. This rate applies for an average distance of 368 miles,[5] reflects 61.2 per cent of the Holmes & Hallowell Scale[6] (*Holmes & Hallowell Co.* v. *G. N. Ry. Co.*, 69 I. C. C. 11) and yields average earnings of 5.7 mills per ton-mile. The interstate rate which this Commission approved in I. & S. 4368 from mines in the southern Illinois group to Beloit, Wisconsin, is $2.55 per net ton. This rate applies for an average distance of 392 miles, reflects 70.6 [fol. 272] per cent of the Holmes & Hallowell scale, and yields average earnings of 6.5 mills per ton-mile. The interstate rate recently prescribed in *Midland Electric Coal Corporation* v. *C. & N. W. Ry. Co.*, 232 I. C. C. 5, from mines in

[4] Rates stated in this petition include the increases to the interstate and intrastate rates made in 1937 and 1938 following *Ex Parte* No. 115, but do not include the increases made in 1942 following *Ex Parte* No. 148.

[5] Distances given in this petition are via average short tariff routes.

[6] All comparisons made to the Holmes & Hallowell scale in this petition are to that scale as increased in accordance with the increases authorized in *Ex Parte* No. 115.

the southern Illinois group to Dubuque, Iowa, and which presently is in effect, is $2.89 per net ton. This rate applies for an average distance of 420 miles, reflects 77.5 per cent of the Holmes & Hallowell scale and yields average earnings of 6.9 mills per ton-mile. The interstate rate which the Interstate Commission prescribed in *Intrastate Rates on Bituminous Coal in Illinois*, 182 I. C. C. 537, from mines in the southern Illinois group to Davenport, Iowa, was $2.25 per net ton. For an average distance of 340 miles this rate represents 69.2 per cent of the Holmes & Hallowell scale and yields average earnings of 6.6 mills per ton-mile.

(*b*) The intrastate rate required to be continued in effect from mines in the Springfield group is $1.80 per net ton. This rate applies for an average distance of 253 miles, reflects 65.2 per cent of the Holmes & Hallowell scale, and yields average earnings of 7.1 mills per ton-mile. The interstate rate which this Commission found justified in I. & S. 4368 from mines in the Brazil-Clinton, Indiana, group to the same destination is $1.95 per net ton. This rate applies for an average distance of 253 miles, reflects 70.7 per cent of the Holmes & Hallowell scale and yields average earnings of 7.7 mills per ton-mile.

[fol. 273] 2. *To Freeport, Illinois:*

The intrastate rate on bituminous coal from mines in the southern Illinois group which by order of the Illinois Commission your petitioners are required to maintain is $2.10 per net ton. This rate applies for an average distance of 370 miles, reflects 61.2 per cent of the Holmes & Hallowell scale and yields average earnings of 5.7 mills per ton-mile. In *Creamery Package Manufacturing Co.* v. *Alton R. R. Co.*, 227 I. C. C. 322, 251 I. C. C. 181, this Commission found not unreasonable interstate rates from mines in the southern Illinois group to Fort Atkinson and Lake Mills, Wisconsin, of $2.83 and $2.93 per net ton, respectively. These rates apply, respectively, for average distances of 437 and 452 miles, reflect 73.3 and 73.6 per cent of the Holmes and Hallowell scale and both yield average earnings of 6.5 mills per ton-mile. The interstate rate which this Commission approved in I. & S. 4368 from mines in the southern Illinois group to Beloit, Wisconsin, is $2.55 per net ton. This rate applies for an average distance of 392 miles, reflects 70.6 per cent of the Holmes & Hallowell scale, and yields average earnings of 6.5 mills per ton-mile.

3. *To Harvard, Illinois:*

The intrastate rate on bituminous coal from mines in the southern Illinois group which by order of the Illinois Commerce Commission your petitioners are required to maintain is $2.40 per net ton. This rate applies for an average distance of 421 miles, reflects 64.3 per cent of the [fol. 274] Holmes & Hallowell scale and yields average earnings of 5.7 mills per ton-mile. The interstate rate which this Commission found justified in I. & S. 4368 from mines in the southern Illinois group to Beloit, Wisconsin, is $2.55 per net ton. This rate applies for an average distance of 392 miles, reflects 70.6 per cent of the Holmes & Hallowell scale and yields average earnings of 6.5 mills per ton-mile.

Petitioners state that the foregoing examples are intended to be merely illustrative, and if given an opportunity to do so your petitioners will be prepared to show numerous other examples of the undue and unreasonable advantage, preference, and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce on the other hand.

IX

Petitioners show that there is a heavy movement of bituminous coal traffic intrastate via the lines of your petitioners from mines in Illinois to Rockford, Freeport, Dixon, and related destinations in northern Illinois. The revenue which your petitioners receive for the transportation of this intrastate bituminous coal traffic under the rates required to be maintained as maxima by orders of the Illinois Commerce Commission aforementioned is at least $60,000 less per annum than the revenue which your petitioners would receive if the level of the intrastate rates thereon were increased to a level commensurate with the level of the interstate rates from other mines to the same destinations [fol. 275] and from the same mines to other destinations in southern Wisconsin and eastern Iowa, which the Interstate Commerce Commission has prescribed or found not unreasonable.

The revenue discrimination above mentioned does not reflect the entire revenue loss suffered by your petitioners as a result of the required continuance of the low intrastate rates on bituminous coal to Rockford, Freeport, Dixon, and

related points. Under the orders in the *West Kentucky Coal Bureau* and *Beloit* cases aforementioned, your petitioners are precluded from increasing the interstate rates from west Kentucky mines to the aforesaid destinations in northern Illinois and are unable to avoid reducing the interstate rates from Illinois, Indiana, and west Kentucky mines to Beloit, Wisconsin, by reason of the refusal of the Illinois Commission to permit the proposed increases in the intrastate rates to become effective. Nor can the rates from Indiana mines be increased to this destination territory without corresponding increases being made in the rates from Illinois mines, without jeopardizing and disrupting the entire adjustment of rates on bituminous coal in this territory. The revenue loss which your petitioners suffer by reason of these circumstances is at least $40,000 per annum.

As a direct result, therefore, of the refusal of the Illinois Commission to permit to become effective increases in the intrastate rates on bituminous coal to Rockford, Freeport, Dixon, and related points, to a level more nearly approach-[fol. 276] ing the level of the interstate rates to the same destinations approved by this Commission in I. & S. 4368, and more nearly approaching the level of the interstate rates presently in effect from Illinois, Indiana, and west Kentucky mines to adjacent destinations in southern Wisconsin and eastern Iowa, your petitioners are suffering a revenue loss on the bituminous coal tonnage transported by them from Illinois, Indiana, and west Kentucky mines to Beloit, Wisconsin, and to Rockford, Freeport, Dixon, and related destinations in northern Illinois of at least $100,000 per annum.

X

Petitioners further show that there are no operating or traffic conditions or circumstances of any kind which justify or require rates on coal moving in intrastate commerce from mines in the State of Illinois to Rockford, Freeport, Dixon or related destinations in northern Illinois, lower than the level of the rates which are contemporaneously applicable or which have been approved by the Interstate Commerce Commission on interstate shipments of bituminous coal from mines in Illinois, Indiana, and western Kentucky to destinations in Illinois, Iowa, or Wisconsin.

XI

Petitioners further show that the rates which have been suspended in I. & S. 5139, applying on interstate shipments of bituminous coal from origins in Illinois, Indiana, and western Kentucky to Beloit, Wisconsin, and to the points [fol. 277] of destination in northern Illinois to which lower intrastate rates are required to be maintained by orders of the Illinois Commerce Commission, as well as the interstate rates now in effect from origins in Illinois, Indiana, and west Kentucky to adjacent destinations in eastern Iowa and southern Wisconsin, are not in excess of maximum reasonable rates.

XII

Wherefore, your petitioners pray this honorable Commission to institute promptly an investigation with respect to the matters and things in this petition recited; to make parties to such investigation all common carriers by railroad subject to the Interstate Commerce Act which operate in the State of Illinois; and, after due notice has been given to the State of Illinois and to the proper authorities thereof, and after such hearing or hearings as the Commission may direct to be held, an order be entered by the Commission (jurisdiction to issue which is affirmed, under circumstances such as are here present, in *Emergency Freight Charges Within Georgia*, 213 I. C. C. 515, 516-517, and other cases), removing said violations of law herein complained of and prescribing rates and charges for the transportation of bituminous coal moving in intrastate commerce within the State of Illinois from producing points to Rockford, Freeport, Dixon, and other destinations in the territory north and west of Chicago to which increased rates on bituminous coal were proposed by your petitioners but suspended by order of the Illinois Commerce Com- [fol. 278] mission in its Docket No. 30935 (a copy of said suspension order being attached as Appendix A hereto), which shall not be lower than the rates and charges for the intrastate transportation of bituminous coal proposed by your petitioners in schedules which were suspended by the aforesaid order of the Illinois Commerce Commission entered in its Docket No. 30935 as aforesaid; and that there be taken in the premises all such further proceedings, and that there be entered all such further order or orders as may be necessary to remove the advantage, preference,

prejudice, and discrimination as set out in this petition and as may be shown as a result of such investigation as may be ordered by this Commission.

Respectfully submitted,

W. S. Mercer, Agent for Petitioners.

Union Station Building, Chicago, Illinois.
August 12, 1942.

[fol. 279] APPENDIX A

30935

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

The Alton Railroad Company, et al.

In the matter of the proposed changes in rates on bituminous coal between points in the State of Illinois.

SUSPENSION ORDER

By the Commission:

Schedules have been filed by Illinois carriers in which it is proposed to change rates on bituminous coal between points in the State of Illinois, and it is further proposed in the said schedules that such changes in rates shall become effective August 2, 1942.

It appears, from an examination of the schedules hereinafter named, that the Commission should enter upon a hearing concerning the propriety of the proposed changes in rates, and that, pending the hearing and the decision thereon, the said changes in rates should not go into effect.

It Is Therefore Ordered that the proposed changes in rates on bituminous coal between points in the State of Illinois, stated in schedules designated as follows:

The Alton Railroad Company:
Supplement No. 22 to Ill. C. C. No. 147;
The Atchison, Topeka and Santa Fe Railway Company:
Supplement No. 30 to Ill. C. C. No. 622;

[fol. 280] The Baltimore and Ohio Railroad Company (Sandusky, Willard, Stewartsville, Belpre, Ohio and West):
Supplement No. 40 to Ill. C. C. No. WL-984;
Chicago & Eastern Illinois Railroad Company:
Supplement No. 17 to Ill. C. C. No. 2;
Chicago & Illinois Midland Railway Company:
Supplement No. 2 to Ill. C. C. No. B-221;
Chicago and North Western Railway Company (Charles M. Thomson, Trustee):
Supplement No. 12 to Ill. C. C. No. 867;
Chicago, Burlington & Quincy Railroad Company:
Supplement No. 38 to Ill. C. C. No. 2064;
Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees):
Supplement No. 9 to Ill. C. C. No. 593 and
Supplement No. 21 to Ill. C. C. No. 608;
The Chicago, Rock Island and Pacific Railway Company (Frank O. Lowden and Joseph B. Fleming, Trustees):
Supplement No. 25 to Ill. C. C. No. 782;
Gulf, Mobile and Ohio Railroad Company:
Supplement No. 19 to Ill. C. C. No. 3;
Illinois Central Railroad Company:
Supplement No. 11 to Ill. C. C. No. E-316;
Illinois Terminal Railroad Company:
Supplement No. 23 to Ill. C. C. No. 62;
Litchfield and Madison Railway Company:
Supplement No. 34 to Ill. C. C. No. 296;
Louisville and Nashville Railroad Company:
Supplement No. 48 to Ill. C. C. No. 114;
[fol. 281-282] The Minneapolis & St. Louis Railroad Company (L. C. Sprague, Receiver):
Supplement No. 21 to Ill. C. C. No. 303;
Missouri Pacific Railroad Company (Guy A. Thompson, Trustee):
Supplement No. 23 to Ill. C. C. No. 397;
The New York Central Railroad Company:
Supplement No. 54 to Ill. C. C. No. 22 and
Supplement No. 3 to Ill. C. C. No. 28;
The Pennsylvania Railroad Company:
Supplement No. 51 to Ill. C. C. 146;
Southern Railway Company:
Supplement No. 34 to Ill. C. C. No. C-278;

Wabash Railroad Company:
Supplement No. 42 to Ill. C. C. No. 1081;

all other tariffs or schedules not herein specifically designated in so far as they purport to change rates on bituminous coal between points in the State of Illinois, effective August 2, 1942; and all reissues of the aforesaid schedules; be, and the same are hereby, suspended until November 30, 1942, subject to the further order of this Commission, and no change shall be made in such rates during the said period of suspension unless authorized by special permission of the Commission.

It Is Further Ordered that the rates thereby sought to be altered shall not be changed by any subsequent tariff or schedule, until this proceeding has been disposed of or until the period of suspension and any extension thereof has expired unless authorized by special permission of the Commission.

By order of the Commission, at Springfield, Illinois, this 21st day of July, 1942.

(Signed) Frank M. Kalteux, Secretary. (Seal.)

[fol. 283] At a Session of the Interstate Commerce Commission, Division 1, Held at Its Office in Washington, D. C., on the 9th Day of September, A. D. 1942

No. 28881

Bituminous Coal Rates Within Illinois

Order—September 9, 1942

It appearing, That a petition has been filed on behalf of The Alton Railroad Company and other common carriers by railroad operating in the State of Illinois averring that the Illinois Commerce Commission by order dated July 21, 1942, in its Docket No. 30935, *In the Matter of the Proposed Changes in Rates on Bituminous Coal between Points in the State of Illinois*, required petitioners to maintain rates for application on bituminous coal moving by rail in intrastate commerce within the State of Illinois from producing points to Rockford, Freeport, Dixon, and other destinations north and west of Chicago, which are less than those on interstate traffic;

It further appearing, That the said petitioners allege that the observance by them of said order of the Illinois Commerce Commission causes and results in undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce on the one hand and interstate commerce on the other hand, and undue, unreasonable and unjust discrimination against interstate commerce;

And it further appearing, That there have been brought in issue rates and charges made or imposed by authority of the State of Illinois:

It is ordered, That an investigation be, and it is hereby, instituted by the Commission, upon its own motion, to determine whether the rates and charges of common carriers by railroad, or any of them, for the transportation of bituminous coal moving in intrastate commerce within the State of Illinois from producing points to Rockford, Freeport, Dixon, and other destinations north and west of Chicago, made or imposed by authority of the State of Illinois, cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and also to determine what rates and charges, if any, or what maximum or minimum or maximum and minimum rates and charges shall be prescribed thereafter to be charged by common carriers by railroad operating within the State of Illinois in order to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist.

[fol. 284] *It is further ordered*, That all common carriers by railroad operating within the State of Illinois subject to the jurisdiction of this Commission be, and they are hereby, made respondents to this proceeding; that a copy of this order be served upon each of said respondents; and that the State of Illinois be notified of this proceeding by sending copies of this order and of said petition by registered mail to the Governor of said State, and to the Illinois Commerce Commission at Chicago, Ill.

It is further ordered, That notice of this proceeding be given the public by depositing a copy of this order in the

office of the Secretary of the Commission at Washington, D. C.

And it is further ordered, That this proceeding be, and the same is hereby, assigned for hearing October 27, 1942, 9:30 o'clock A. M., at the Morrison Hotel, Chicago, Illinois, before Examiner Trezise.

By the Commission, division 1.

W. P. Bartel, Secretary. (Seal.)

[fol. 285] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 28881

BITUMINOUS COAL RATES WITHIN ILLINOIS

I. & S. Docket No. 5139

COAL TO BELOIT, WIS. AND NORTHERN ILLINOIS

Docket No. 28888

MIDDLE STATES FUELS, INC.

vs.

A. T. & S. F. RY. CO., et al.

PETITION FOR LEAVE TO INTERVENE—Filed March 28, 1943

Comes now your petitioner, Railroad Commission of Kentucky, and respectfully represents that it has an interest in the matters in controversy in the above styled proceedings and desires to intervene and become a party thereto and for grounds of the proposed intervention says:

I

That petitioner is a body politic created by the Constitution of the Commonwealth, and among other duties is required by statute to bring to the attention of the Interstate Commerce Commission freight rates to and from Kentucky, which it believes to be unreasonable, unduly discriminatory, or otherwise unlawful.

II

That the proceedings named above bring into issue the relationship of the rates on bituminous coal, carloads, from all the midwestern coal fields, including that of western Kentucky, to various destinations in northern Illinois and southern Wisconsin. That any changes in these rates which [fol. 286] would increase the differentials of the western Kentucky group over the Illinois and Indiana groups would be detrimental to the producers of coal in western Kentucky and also to other Kentucky interests dependent upon the coal industry for their livelihood. Petitioner is therefore opposed to any changes in the rates from and to the points embraced herein which would increase the differentials of western Kentucky over the Illinois and Indiana groups.

Wherefore said Railroad Commission of Kentucky prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at oral argument, if oral argument is granted.

Respectfully submitted, Railroad Commission of Kentucky, by Frank L. McCarthy, Chairman; Jack E. Fisher, Member; Mrs. John W. Langley, Member.

Dated at Frankfort, Ky., March 10, 1943.

[fol. 287] *Duly sworn to by Frank L. McCarthy. Jurat omitted in printing.*

[fol. 288] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 28881

BITUMINOUS COAL RATES WITHIN ILLINOIS

I. & S. Docket No. 5139

COAL TO BELOIT, WISC. and NORTHERN ILLINOIS

Docket No. 28888

MIDDLE STATES FUELS, INC.

vs.

A. T. & S. F. Ry., et al.

PETITION FOR LEAVE TO INTERVENE—Filed March 28, 1943

Comes now your petitioner, Kentucky Coal Agency, Incorporated, and respectfully represents that it has an interest in the matters in controversy in the above styled proceedings and desires to intervene and become a party thereto and for grounds of the proposed intervention says:

I

That petitioner is a Kentucky corporation with its principal office and place of business at Madisonville, Ky. Petitioner's stockholders own and operate bituminous coal mines located on the Illinois Central Railroad and Louisville & Nashville Railroad, in what is generally known as the western Kentucky coal field.

II

That the proceedings named above bring into issue the relationship of the rates on bituminous coal from all of the midwestern coal fields, including that of western Kentucky, to various destinations in northern Illinois and southern Wisconsin. That any changes in these rates which would [fol. 289] increase the differentials of the western Kentucky group over the Illinois and Indiana groups would be detrimental to petitioner's members. Petitioner is therefore opposed to any changes in the rates from and to the points embraced herein which would increase the differentials of western Kentucky over the Illinois and Indiana groups.

Wherefore, said Kentucky Coal Agency, Incorporated, prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at oral argument, if oral argument is granted.

Respectfully submitted, Kentucky Coal Agency, Incorporated, by H. C. Moore, President; J. E. Marks, 145 East High Street, Lexington, Kentucky, Attorney for Petitioner.

Dated at Lexington, Ky., March 10, 1943.

[fol. 290] *Duly sworn to by H. C. Moore. Jurat omitted in printing.*

[fol. 291] INTERSTATE COMMISSION COMMISSION

INVESTIGATION AND SUSPENSION DOCKET NO. 5139 [1]

COAL TO BELOIT, WIS., AND NORTHERN ILLINOIS

Submitted December 7, 1944. Decided July 9, 1945

1. Proposed rates on bituminous coal from Indiana and Western Kentucky rate groups to northern Illinois destinations, and from Indiana groups to Beloit, Wis., found unreasonable, unjustly discriminatory, and unduly prejudicial and preferential.

2. Present rates on bituminous coal from points in the Indiana groups to northern Illinois destinations found unjustly discriminatory and unduly prejudicial and preferential.

3. Intrastate rates on bituminous coal from Illinois mines to northern Illinois destinations found to cause unjust discrimination against interstate commerce.

4. Bases for reasonable, non-discriminatory, and non-prejudicial rates from Illinois, Indiana, and western Kentucky mines to northern Illinois destinations and Beloit determined and, in part, prescribed. Suspended schedules of

---

[1] This report also embraces Docket No. 28881, Bituminous Coal Rates Within Illinois.

interstate rates required to be canceled, without prejudice to the establishment of rates on the approved bases.

Erle J. Zoll, Jr., Hewitt Biaett, Edward A. Kaier, Elmer A. Smith, Toll R. Ware, T. O. Jennings, J. A. Christiansen, Charles Clark, A. J. Dixon, T. N. Cook, B. F. Rice, C. J. Bindner, P. F. Gault, William L. Hunter, Leo P. Day, and R. G. Raasch for respondents.

David Cavers, Richard H. Field, Bernard M. Fitzgerald, Warren Price, Jr., Fred D. Binkley, and M. D. Miller for Price Administrator.

George F. Barrett, Attorney General, and *William C. Wines*, Assistant Attorney General, for the State of Illinois; *John E. Benton* and *Frederick G. Hamley* for National Association of Railroad and Utilities Commissioners.

C. B. Cardy, C. P. Hoy, Ford D. Porter, R. H. May, August G. Guthcim, A. S. Boden, R. F. Wood, C. S. Bather, Charles W. Stadell, N. H. Vaughan, E. B. Wilkinson, J. A. Moran, Harold V. Scott, A. J. Christiansen, Howard W. Vesey, J. E. Marks, Frank L. McCarthy, Joseph W. Elliott, George W. Cole, H. F. Cholet, and *William F. Ehmann* for protestants and other parties.

REPORT OF THE COMMISSION

MILLER, *Commissioner:*

Exceptions were filed to the report proposed by the [fol. 292] examiner and we have had the benefit of oral argument. Our conclusions differ in some respects from those recommended by the examiner.

In Investigation and Suspension Docket No. 5139, respondents proposed to increase the rates on bituminous coal, in carloads, from mines in the Brazil-Clinton, Linton-Sullivan, and Princeton-Ayrshire (hereinafter termed Brazil, Linton, and Princeton, respectively) districts in Indiana to Beloit, Wis., other than those on the Chicago, Milwaukee, St. Paul & Pacific Railroad, hereinafter termed the Milwaukee, in the first two districts and those on the Southern Railway and the Algers, Winslow & Western Railway in the latter district; and from all of the Indiana districts and the western Kentucky group to Rockford, Freeport, Dixon, and a number of other Illinois points north and west of Chicago, Ill. Upon protest of Indiana coal-shipping interests and various other parties, the operation of these schedules was postponed for the statutory period and later voluntar-

ily postponed by respondents until the disposition of this proceeding.

Upon petition of the principal railroads operating in the State of Illinois, alleging a violation of section 13 of the Interstate Commerce Act, we entered, in No. 28881, upon an investigation concerning the lawfulness of rates and charges for the intrastate transportation of bituminous coal, in carloads, from Illinois mines to these same northern Illinois destinations, with the view of prescribing such nondiscriminatory, nonprejudicial, and otherwise lawful rates and charges for such traffic as the circumstances may warrant. Petitioners ask that the rates required to be maintained within the State of Illinois be found unlawful in that they cause undue advantage, preference, and prejudice as between persons and localities in intrastate commerce on the one hand, and interstate or foreign commerce on the other, and undue, unreasonable, and unjust discrimination against interstate commerce. An order requiring removal of the alleged advantage, preference, prejudice, and discrimination is sought.

Increases in the intrastate rates on coal, corresponding in many respects to those here proposed on interstate commerce, were proposed by respondent Illinois carriers from Illinois groups to the same destinations in northern Illinois. These were suspended by the Illinois Commerce Commission, and now constitute the subject of investigation in its docket No. 30935. A complaint filed with that Commission, docket No. 31295, concerning the rates from the Fulton-Peoria, Ill., rate group, including those from Atkinson, Ill., to Dixon, was set for hearing with these proceedings and was partly heard on this record.

These proceedings were heard and disposed of under the cooperative plan agreed upon between this Commission and the various State commissions. Accordingly, representatives of the Illinois Commission sat with our examiner at the hearing and two members of that Commission joined us in hearing the oral argument.

[fol. 293] Numerous traffic bureaus and others were represented in these proceedings, including Western Pennsylvania Coal Traffic Bureau, Kentucky Coal Agency, Inc., Railroad Commission of Kentucky, Coal Trade Association of Indiana, Madusa Portland Cement Company, Reynolds Wire Company, Northern Illinois Coal Corporation, Dixon Chamber of Commerce, Sterling Traffic Bureau, Rockford

Chamber of Commerce, Freeport Chamber of Commerce, Belvidere Chamber of Commerce, Fairbanks-Morse & Company, Beloit Commercial Club, and Wisconsin Coal Bureau, Inc.

History of The Adjustment

The coal-rate adjustment with which we are here concerned has been before us a number of times. Its history is recorded in *Intrastate Rates on Bituminous Coal in Illinois*, 182 I.C.C. 537, *Coal to Illinois and Wisconsin*, 232 I.C.C. 151, and *Fairbanks-Morse & Co.* v. *Alton & S. R.*, 251 I.C.C. 181. It will be restated here only to the extent necessary for a clear understanding of the issues.

In 1930, prior to *Intrastate Rates on Bituminous Coal in Illinois*; *supra*, the Illinois commission required a reduction in the intrastate rates to a number of northern Illinois points, for example, from the southern Illinois group to Rockford from $2.17 [2] to $2, or 75 cents less than the rate from the same group to Beloit, 18 miles north of Rockford, and the rate from the Fulton-Peoria group to Rockford became 42 cents less than that to Beloit. Because of these reductions the interstate rates from Indiana and western Kentucky to Rockford and other northern Illinois points were likewise reduced. Subsequently, in *Fairbanks-Morse & Co.* v. *Alton & S. R.*, 195 I.C.C. 365, division 2 found that rates from mines in Illinois, Indiana, and western Kentucky to Beloit were not unreasonable, with exceptions unnecessary here to relate, but that they were unduly prejudicial to Beloit and unduly preferential of Rockford to the extent that they exceeded the contemporaneous rates from the same origins to Rockford by more than 25 cents. On further hearing, 251 I.C.C. 181, we found, among other things, that rates to Beloit from southern Illinois of $2.40 and from Fulton-Peoria of $1.80, the present rates, were not unreasonable, but that they were unduly prejudicial to Beloit and unduly preferential of Rockford to the extent that they exceeded the Rockford rates by more than 15 cents.

The rates on coal from Illinois groups to Rockford, and nearby points such as Freeport and Dixon, have for many years been relatively lower for like distances than rates on like traffic generally applying in this territory. However,

[2] Rates and differences in rates are stated in amounts per ton of 2,000 pounds.

in *Intrastate Rates on Bituminous Coal in Illinois, supra,* we declined to require an increase in intrastate rates to Rockford, Freeport, and Dixon unless and until the rates from the Indiana groups to the same destinations were also increased to a level more nearly commensurate with the general level of rates in this territory. When in *Fairbanks-Morse & Co.* v. *Alton & S. R., supra,* upon further hearing, [fol. 294] we related the rates to Beloit 15 cents over Rockford, an alternative was contemplated which permitted defendants to increase the rates to Rockford or reduce the rates to Beloit, or both, but the intrastate rates from the Illinois groups to Rockford had been prescribed as maximums by the Illinois Commission and, consequently, those rates could not be increased. Also, to increase the rates from Indiana and western Kentucky to these destinations without similar increases from Illinois would disrupt long-existing origin relations.

Accordingly, following the first report and order in *Fairbanks-Morse & Co.* v. *Alton & S. R., supra,* the rates to Beloit were reduced, but as a result of the 15-cent relation prescribed in that proceeding on further hearing, respondents now propose to increase the rates to Rockford, and other nearby points, so they will conform to the requirements in the last-named proceeding and at the same time be on a level more nearly commensurate with the general level of interstate rates in this territory. These proposed increases constitute the subject of the investigation in I. & S. No. 5139 on interstate traffic. As stated, in docket No. 30935 of the Illinois Commission, somewhat similar increases are proposed on intrastate traffic from Illinois origins to these same northern Illinois destinations.

Proposed increases in the rates from Indiana and western Kentucky to these northern Illinois points were before us in *Coal to Illinois and Wisconsin, supra,* decided in 1939. We found the proposed revision justified, except certain rates from the Indiana groups of Princeton and Boonville. Embraced in that approval was the proposal to increase the rate from southern Illinois to Beloit from $2.25 to $2.40, which, with the 1937 general increase, would have resulted in a rate of $2.55. A similar revision was proposed at that time in the intrastate rates from Illinois groups to northern Illinois, including an increase from southern Illinois to Rockford from $2 to $2.15, but this proposed revision was found not justified by the Illinois Commission. As a result

of the action of that Commission, respondents were unwilling to make effective the interstate revision because of the maladjustment which would have resulted between the approved interstate rates and the then-existing intrastate rates. Since that time the rate from southern Illinois to Rockford has been increased to $2.10, so as to reflect the general increase of 1937.

Following our decision in *Coal to Illinois and Wisconsin, supra*, upon petition of the interested carriers, we entered upon a section 13 investigation concerning the lawfulness of the intrastate rates from Illinois producing points to Rockford and other destinations in northern Illinois, in their relation to the interstate rates on like traffic. Subsequently, upon request of respondents, we discontinued that investigation and granted special permission to respondents to cancel the schedules proposed in *Coal to Illinois and Wisconsin, supra*.

[fol. 295] We have here before us substantially the same controversy, with several important exceptions referred to later, that was considered in *Coal to Illinois and Wisconsin, supra*, together with the concurrent proposal to increase the intrastate rates to points in northern Illinois. Except with respect to rates from the DuQuoin district later referred to, the proposed rates to Beloit and Rockford, so far as appears, would in no instance reflect a relation greater than that of 15 cents as prescribed in *Fairbanks-Morse & Co.* v. *Alton & S. R., supra*.

The Lawfulness of the Interstate Rates

Brazil is the base group on Indiana coal traffic to the north and northwest. Except to a number of points in northern Illinois, the Brazil rates are generally the same as those from the Springfield group in Illinois to the same destinations. From the Linton group the rates are usually 10 cents higher than from Brazil; from the Princeton group, 7 cents higher than from Linton; and from the Boonville group 3 cents higher than from Princeton. For the shorter hauls to Illinois these relations are not strictly observed. There is still another Indiana group known as the Evansville group, located south of Boonville, but it is a negligible factor and ships little coal except to nearby points. It has rates generally 10 cents, and in some instances 30 cents, higher than the rates from Boonville, depending upon the destination.

Illinois has 8 coal-producing districts, of which Springfield in central Illinois has long been the largest in area and southern Illinois the largest in production. Up to recent years southern Illinois was regarded as the base Illinois group, but in the last decade the Fulton-Peoria group in northwestern Illinois has materially increased its production, and in *Midland Electric Coal Corp.* v. *Chicago & N. W. Ry. Co.*, 232 I. C. C. 5, and *Fairbanks-Morse & Co.* v. *Alton & S. R.*, *supra*, that group was used as the base from Illinois mines to all points in Iowa and to certain points in southern Wisconsin.

To the north and northwest Fulton-Peoria is generally 30 or 35 cents under Springfield and 60 or 70 cents under southern Illinois, with varying differentials between the other Illinois groups. Rates from the respective Indiana groups 30, 20, 13, and 10 cents under southern Illinois to the Northwest, that is, northeastern Iowa, southeastern Minnesota, and southern Wisconsin, including Beloit, were approved in 1934 in *Illinois Coal Traffic Bureau* v. *Ahnapee & W. Ry. Co.*, 204 I. C. C. 225, and those differences, referred to by the Indiana shippers as the standard differentials, still prevail to practically all of that area. For some years prior to 1930 those differences applied also to most of these northern Illinois destinations, and the Indiana interests ask that they be now restored. Such restoration would have been largely accomplished under the proposed adjustment as approved by us in *Coal to Illinois and Wisconsin*, *supra*, except from the Princeton and Boonville groups. While the instant proposal would change the origin relations to a number of destinations, no attempt is here made by respondents to restore the standard differentials, the avowed purpose being to place upon a higher level the midwestern rates to these northern Illinois destinations, without disturbing the present origin relations more than necessary to reflect the required maximum spread of 15 cents as [fol. 296] between Rockford and Beloit. The result is greatly complicated by the insistence of the Milwaukee upon a so-called dual basis of rates from the Brazil and Linton groups, which under the proposal would be extended also to the Princeton group on traffic to Beloit. More will be said about that later, but first we shall discuss the evidence having a more direct bearing upon the maximum reasonableness of the proposed rates.

Maximum Reasonableness of the Proposed Rates.—Increases, which are generally the same from all of the mines in each of the origin groups, ranging from 5 to 17 cents from Indiana and approximately the same from Illinois, are here proposed in rates from all origins in the Indiana groups and from all except a few origins in the Illinois groups to 70 or more points in northern Illinois. A few of the Illinois rates, mostly from the northern Illinois district, are not proposed to be changed, and others are to be slightly reduced. To Beloit, the increases proposed are 17 cents from the Brazil group, and 12 cents from the Linton and Princeton groups, except that no increase is proposed from mines on the Milwaukee in the first two groups, nor from points on the Southern and the Algers, Winslow & Western in the Princeton group. No change is proposed from points in the Boonville group nor in the rates from the Illinois groups to Beloit. Appendix A hereto illustrates the present and the proposed rate adjustment. It shows the shortest tariff-route distances, the present rates, and those proposed from the 4 Indiana groups and from the Illinois groups to Beloit and 12 representative destinations in northern Illinois, together with the rates to most of those points approved in *Coal to Illinois and Wisconsin, supra.*

Respondents compare the proposed rates with rates prescribed or approved by us from Illinois and Indiana groups to destinations in southern Wisconsin and eastern Iowa, illustrations of which will be found in appendix B hereto. The distances shown in that appendix are the average from all of the mines in each of the groups, and the proposed rates there appearing, where they differ from any of the mines in the respective groups, are the highest proposed from any of the points in each such group. It will be noted that they are, in general, substantially lower than the rates to points in Wisconsin and Iowa with which they are compared. Because several of the parties have compared some of the proposed rates with those to Chicago, the latter are also included in appendix B. Due to unusually severe competitive conditions which are peculiar to Chicago, the rates to that point cannot be given controlling weight in passing upon the propriety of the proposed rates. *Coal to Illinois and Wisconsin, supra,* page 169. The rates set forth in that appendix to Janesville, Fort Atkinson, and Lake Mills, Wis., 8, 51, and 68 miles, respectively, from the Springfield group beyond Beloit, were approved by us in *Fairbanks-*

Morse & Co. v. *Alton & S. R., supra,* wherein the present rates to Beloit from Illinois, Indiana, and western Kentucky were found not unreasonable.

[fol. 297] The level of the class rates and of many of the commodity rates is approximately the same to northern Illinois as to the southern portion of Wisconsin and is usually higher in Iowa west of the Mississippi River than in Illinois, but on coal the rates to southern Wisconsin and to Iowa, most of them approved by us, are on a substantially higher level than either the present or the proposed rates to northern Illinois. This relation in the coal rates is due chiefly to the reductions in the Illinois intrastate rates required by the Illinois Commission and, in lesser degree, to the influence upon these rates to northern Illinois of the relatively low rates to Chicago. To the 12 representative points in northern Illinois used by respondents and shown in appendix A, the proposed rates average 84.6 percent from the Fulton-Peoria group, 75.6 percent from the Springfield group, and 77.6 percent from the Brazil group of the so-called Midland scale used as the basis for the maximum reasonable rates from Fulton-Peoria to Iowa destinations prescribed in *Midland Electric Coal Corp.* v. *Chicago & N. W. Ry. Co., supra.*

Perhaps the best measure of the reasonableness of the rates here proposed from the nearer mines or groups is the distance scale of rates referred to herein as the Indiana-Illinois scale prescribed in *Coal Trade Assn. of Indiana* v. *Baltimore & O. R. Co.*, 190 I. C. C. 743, for distances up to 300 miles from the 4 Indiana groups to destinations in eastern-central Illinois. We have several times referred to that scale as "relatively low", but it is on a higher level than all except a few of the numerous rates in this Indiana-Illinois territory portrayed upon this record. This scale, like the Midland scale, has become somewhat distorted for present application by the general 1937 increases of 5 cents for rates up to and including $1, 10 cents for higher rates up to and including $2, and 15 cents for rates above $2. In appendix C hereto these two scales have been reshaped so as to reflect in an appropriate manner those general increases, and the Indiana-Illinois scale has been extended beyond 300 miles. The scales there set forth are the Indiana-Illinois and Midland scales as used in this report. To the 12 representative northern Illinois destinations, the proposed rates average 93.5 percent of the Indiana-Illinois

scale from Fulton-Peoria, 159 miles, 91.5 percent from Springfield, 225 miles, 90 percent from Brazil, 256 miles, 88.3 percent from Linton, 293 miles, 84.3 percent from southern Illinois, 354 miles, 83.9 percent from Princeton, 358 miles, and 82.1 percent from Boonville, 392 miles.

To Beloit the present rates from Illinois, not proposed to be changed, average 100 percent of the Indiana-Illinois scale and 89.1 percent of the Midland scale from Fulton-Peoria, 170 miles, and 91.6 and 74.3 percent, respectively, from southern Illinois, 394 miles, and under the proposed adjustment the Indiana rates would average 102.3 and 84.3 percent, respectively, from Brazil, 269 miles, 95.8 and 78.6 percent from Linton, 302 miles, 89.7 and 72.8 percent from Princeton, 379 miles, and 85.2 and 68.9 percent from Boonville, 415 miles.

It is, of course, recognized that the rates from the more distant groups are not and probably should not be based primarily upon distance, but the foregoing scale percentages are helpful as indicating that the proposed rates on the average reflect quite uniformly the common practice in adjusting differentially-related coal rates of according diminishing weight to distances and increasing weight to competition as the length of the haul increases.

[fol. 298] The proposed rates to Beloit and to the northern Illinois destinations are generally on a lower level than the rates to points in Wisconsin and Iowa just beyond the destination territory with which we are here concerned, as illustrated in appendix B. Thus, from the Springfield and Brazil groups the rates to Janesville are, respectively, 89.2 and 93.3 percent of the Midland scale, as compared with 78.7 and 84.3 percent reflected by the respective rates from the same groups to Beloit under the proposed adjustment. The rates from the same groups to Tipton, Iowa, are, respectively, 88.8 and 80.1 percent of the Midland scale, as compared with 75.6 and 77.7 percent reflected by the respective proposed rates from the same groups to the 12 northern Illinois destinations, and with 81.4 and 67.7 percent reflected by the proposed rates from those groups to Sterling, Ill., one of the 12 destinations nearest to Iowa.

It will be noted that in the use of mileage throughout this report, wherever practicable, we have employed the distances over the shortest tariff routes as distinguished from the distance over the short tariff routes, as urged by some of the parties. The former method employs the distance

from each mine or shipping point only once, regardless of the number of carriers that may be serving it. The latter method averages the distances from each mine or shipping point in the group over the shortest route of each carrier serving that mine or shipping point. This latter basis is slightly more favorable to Indiana than to Illinois because of the relatively smaller groups in the former than in the latter, and respondents prefer that method because in their opinion it comes closer to reflecting the actual service performed by them. In *Midland Electric Coal Corp. v. Chicago & M. W. Ry. Co.*, 225 I. C. C. 349, 352, and 232 I. C. C. 5, 6, we discussed the merits of the respective methods of determining distances for the purpose of fixing rates on coal, and found that the use of those over the shortest tariff routes would best serve that purpose, bearing in mind, of course, that the particular distance basis used "is an important factor in determining the level of the rates." The reasons which impelled us to use the shortest tariff-route basis in that proceeding are equally persuasive here.

The Western Pennsylvania Coal Operators Association urges approval of the proposed adjustment on the ground that it would assist in remedying an alleged rate maladjustment; first, between the rates from Indiana, Illinois, and western Kentucky, hereinafter sometimes referred to as the midwestern mines, to points in southern Wisconsin, as compared with those from the same mines to northern Illinois, by raising the rates to the latter area more nearly to the basis of the rates to the former area; and second, between the midwestern mines and the lower west-bank Lake Michigan docks to points in southern Wisconsin by restoring, in part, the relations between the lake docks and southern Illinois to southern Wisconsin prescribed or approved in 1924 in *Lake Dock Coal Cases*, 89 I. C. C. 170. The rela- [fol. 299] tions there approved contemplated a rate from southern Illinois to Beloit and other points in southern Wisconsin of $2.75. As stated, the present rate from southern Illinois to Beloit, not here proposed to be changed, is $2.40 and that proposed to Rockford, less distant than Beloit from southern Illinois by 31 miles, is $2.25. On May 1, 1939, the Wisconsin Public Service Commission, as a part of a State-wide readjustment of coal rates, reduced substantially the rates from Lake Michigan docks to Beloit and other points in southern Wisconsin. Because of this and other material changes in condition on October 3, 1939,

in *Northwestern Coal Dock Operators Assn.* v. *Chicago & A. R. Co.*, 234 I. C. C. 679, we vacated our outstanding order in *Lake Dock Coal Cases, supra.* Of the coal received in Wisconsin in 1937, 9 percent came all-rail and 68 percent ex-lake, a total of 77 percent, from the eastern or Appalachian fields, and 23 percent came from the midwestern mines; in 1940 those percentages were respectively, 8, 68, and 76 from the eastern mines and 24 from the midwestern mines.

From the foregoing we are convinced that the proposed interstate rates do not exceed the maximum of reasonableness, except in those instances where from particular mines certain of the proposed rates exceed what may be called the normal group bases, to which further reference will be made later.

The Origin Relations of the Rates.—There is keen competition between the Indiana, Illinois, and western Kentucky groups in the sale of coal in this destination territory. As is usual in coal-rate proceedings of this nature, the mine operators in certain of the origin groups indicate their dissatisfaction with the rate relations between their particular groups and one or more of the other groups in the same adjustment. Practically every phase of this adjustment, both present and proposed, was made the subject of criticism. The Illinois shippers contend that the rates from Indiana are now on a lower level than those from Illinois to those destinations. They urge that the necessity for complying with the requirements in another proceeding of establishing a 15-cent relation between Rockford and Beloit should not be permitted to serve as an excuse for increasing by as much as 17 cents the rates to a number of points in northern Illinois when that requirement could be met by a maximum reduction of 15 cents to one point, Beloit. They ask that, regardless of what is done with respect to the rates from Indiana, no increase be made in the rates from Illinois.

The Indiana interests, on the other hand, attempted to prove that their rates to these destinations are now relatively higher than those from Illinois, and they are opposed to any increase in their rates without a like or greater increase in the rates from Illinois. They are concerned primarily with the relation of the rates between the various Indiana groups and between those groups on the one hand, and southern Illinois or Springfield, on the other.

While, as stated, for some years prior to 1930 the so-called standard differentials applied to most of those northern Illinois destinations, there appears to have been then, as now, no fixed relation either between the Indiana groups or between those groups and southern Illinois or [fol. 300] Springfield to Rockford, Freeport, and Dixon, the principal coal-consuming points in this destination territory. To Rockford, for example, from January 1, 1910, to July 18, 1925, the rates from Indiana were lower than those from southern Illinois by from 20 to 27 cents from Brazil, 14 to 15.2 cents from Linton, 4.5 to 12 cents from Princeton, and higher than from southern Illinois by from 13 to 21 cents from Boonville. On July 19, 1925, respondents voluntarily reduced the rates from the respective Indiana groups to Rockford by 5, 6, 8 and 28 cents, and made no reductions in the rates from any of the Illinois groups. This resulted in Indiana rates lower than from southern Illinois by 30, 25, 18, and 15 cents, respectively. When in 1930 the Illinois commission required a reduction in the southern Illinois rates to Rockford of 17 cents, the differences were changed to 13 cents from Brazil, 8 cents from Linton, and 1 cent from Princeton under, and 2 cents from Boonville over, southern Illinois, for differences in distance of 112 and 63 miles under, and 12 and 46 miles over, southern Illinois, respectively. These are the rate differences as they exist today, except from Brazil mines on the Milwaukee and from mines on that road and the Illinois Central in the Linton group, to which we shall now direct our attention.

Prior to 1930 the rates to the northern Illinois destinations to which the proposed rates are to apply were, with few exceptions, the same from the Springfield and the Brazil groups, each group being 30 cents under southern Illinois. In that year this relation was disrupted by the reduction referred to in the Illinois intrastate rates, and which precipitated our investigation in *Intrastate Rates on Bituminous Coal in Illinois, supra.* Folowing the carriers' failure in that proceeding to bring about the establishment of the former intrastate rates, the Milwaukee, which serves midwestern mines only in the Brazil and Linton groups, proposed to reduce the rates from mines in those groups served by it to Rockford, Freeport, and certain intermediate points over its single-line routes by 17 cents, the same amount by which the Illinois rates to those points had been

reduced. We suspended that proposed adjustment and in *Coal from Indiana and Illinois*, 197 I. C. C. 245, 200 I. C. C. 689, found it not justified and ordered its cancelation. In *U. S. v. Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, the Supreme Court found our order invalid, among other reasons because it was not supported by adequate findings of fact. The proposed rates became effective in 1934. In 1936, the Milwaukee increased its single-line rates from the Linton group to Rockford and Freeport by 5 cents, so as to make the differential Linton over Brazil on its line 10 cents. Shortly thereafter, the Illinois Central met the action of the Milwaukee by making like reductions in its single-line rates from mines on its line in the Linton group to northern Illinois destinations served by it, including Rockford and Freeport. With the addition of the 1937 general increases, the rates which then resulted are those now in effect. Since the increases here proposed to northern Illinois are generally the same from all of the origins in each of the Indiana and Illinois groups, the dual basis of rates where now in effect to those destinations is to be continued.

[fol. 301] To Beloit, the rates from all of the mines in the respective Indiana groups are now the same, but under respondents' proposal a dual basis of rates would apply to that point, not only from the Brazil and Linton groups, but also from the Princeton group. The Beloit rates are at present higher than those to Rockford by 30 cents from Illinois, except a few points in northern Illinois, and by 30 cents or smaller amounts from Indiana. For example, from southern Illinois the present rate is $2.40 to Beloit and $2.10 to Rockford. As stated, the Beloit rate was found not unreasonable in *Fairbanks-Morse & Co. v. Alton & S. R.* *supra*. Hence, to bring about the 15-cent spread as prescribed in the latter proceeding, it is proposed to increase the Rockford rate from southern Illinois by 15 cents to $2.25. So as not to disturb existing origin relations, respondents propose corresponding increases in the rates to Rockford from all groups in Indiana, Illinois, and western Kentucky. Thus, the joint-line rate from Brazil to Rockford is proposed to be increased by 15 cents to $2.12, and in order to achieve the required 15-cent maximum spread, the Brazil rate to Beloit over the joint-line routes is to be increased by 17 cents to $2.27. But from the Brazil mines on the Milwaukee, as the increase to $1.95 in the single-line

rate to Rockford effectuates the required 15-cent spread under the present Beloit rate of $2.10, no increase to the latter point is proposed from those mines. The 17-cent spread between the present and the proposed single-line and joint-line rates from Brazil to Rockford and other northern Illinois destinations is thus proposed to be extended also to Beloit.

The same circumstances have largely controlled the proposal from the Linton group to Beloit. The joint-line differential of 5 cents Linton over Brazil, which is now maintained to some of the northern Illinois points is to be reflected also in the Beloit joint-line rates from these districts. Thus, the joint-line rate of $2.20 from Linton to Beloit is to be increased by 12 cents to $2.32. The Milwaukee's single-line rate of $2.20 from Linton to Beloit, which now reflects a 10-cent differential over Brazil mines on that road, is not to be disturbed. The difference in the average distances from these districts to Beloit is 33 miles, which according to the Milwaukee warrants a differential of 5 cents about as readily as one of 10 cents.

From the Princeton group the present rate to Beloit over all routes is $2.27. In order to continue Princeton 7 cents over the proposed joint-line rate of $2.32 from Linton, the Princeton rate is to be increased 12 cents to $2.39, except from mines on the Southern and the Algers, Winslow & Western. The latter serves 4 origin points and the Southern 6 (at which there are now only 2 producing mines) in the Princeton group. The Southern is the only carrier serving the Boonville group. It serves a few Illinois mines in the Belleville group, but they are now producing little coal. It does not reach the destination territory. The Southern has declined to increase either the $2.27 rate applying over its line from Princeton or the present rate of $2.30 from Boonville to Beloit.

[fol. 302] The Southern recognizes that the rates on coal to this destination territory are low and might well be increased, but it fears that any increase in the present differentials, Princeton and Boonville over Linton, and a consequent unfavorable relation to southern Illinois would practically eliminate the Indiana mines which it serves from the market at these destinations. The present relations between Linton or southern Illinois on the one hand, and Princeton and Boonville on the other, to the northern Illinois destinations are not uniform, but to Beloit they are

the customary 13 cents Princeton under southern Illinois, 7 cents Princeton over Linton, and 3 cents Boonville over Princeton. By reason of the refusal of the Milwaukee to increase its single-line rates from Brazil and Linton to Beloit, and the consequent insistence by the Southern upon a like stand from its mines in the Princeton and Boonville groups, the present 7-cent differential Princeton over Linton is to be retained only as between the Linton mines on the Milwaukee and the Princeton mines on the Southern and the Algers, Winslow & Western, and between the Linton and Princeton mines served by respondents other than the three just named; but as between the Linton rate of $2.20 to be continued from mines on the Milwaukee and the proposed Princeton rate of $2.39 from mines on respondents other than the Southern and the Algers, Winslow & Western, the differential is to be widened from 7 to 19 cents. This latter differential is the same as that between the Linton mines on the Milwaukee and the Illinois Central on the one hand, and all of the Princeton mines except a few located at 2 points on the Baltimore & Ohio Railroad on the other, under the present and the proposed rates to Rockford.

The major distinction between the instant proposal and that which we approved in 1939 in *Coal to Illinois and Wisconsin, supra*, lies in the proposed perpetuation and extension here of the dual basis of rates from the Indiana mines. Because the dual basis was not proposed to be continued in that proceeding, we had no occasion to pass upon it there. The question of its lawfulness is squarely before us here. In 1934, when in *Coal from Indiana and Illinois, supra*, we found not justified the initial attempt of the Milwaukee to precipitate this dual basis, we did so chiefly on the ground that it would provoke further reductions and eventually disrupt substantial portions of the midwestern coal-rate structure. As stated, shortly after the Milwaukee's reduced rates became effective the Illinois Central established the same basis of single-line rates over its road from Linton mines served by it to a number of northern Illinois destinations. Now it is proposed to extend this basis to the Princeton group at the origin end and to Beloit at the destination end. The record is convincing that once this dual basis becomes effective at Beloit, it will quite certainly spread to other points in Wisconsin served by the Milwaukee, of which there are many.

Four of the 30 origin points in the Brazil group and about 9 of the 31 origins in the Linton group on coal to this destination territory are served by the Milwaukee. The Illinois Central serves 4 points in the Linton group. The other respondents serving these districts are the Baltimore & Ohio, Chicago & Eastern Illinois, New York Central, [fol. 303] Pennsylvania, and Indiana railroads in the Brazil group, and the New York Central, Pennsylvania, Chicago & Eastern Illinois, and Chicago, Indianapolis & Louisville railroads in the Linton group. Of the 12 representative northern Illinois destinations referred to, the Milwaukee has single-line rates to 5 from the Brazil and Linton groups, and the Illinois Central has single-line rates to 4 from the Linton group, which are lower than the rates of the competing carriers from those respective districts to the same destinations. The average distance from all origin points in the Brazil group to the 12 destinations is 256 miles, the average present rate is $1.89 and that proposed $1.98. From the 4 Brazil points on the Milwaukee to the 5 destinations served by it, the average distance is 240 miles, and from the Brazil points on the Chicago & Eastern Illinois, 8 in all, to those same destinations (over routes in some instances in connection with the Milwaukee), it is 247 miles, or only 7 miles longer, but the present rates average $1.80 and those proposed $1.94 over the single-line routes of the Milwaukee and $1.92 and $2.02, respectively, over the routes of the Chicago & Eastern Illinois. The average distance over all of the routes maintaining the average rate of $1.92 (many of which are in connection with the Milwaukee) is 254 miles.

From all of the Linton mines the average distance to the 12 destinations is 293 miles. The present rates average $1.94 and those proposed $2.03. From the Linton points on the Milwaukee to the 5 representative destinations to which that respondent's single-line rates apply, the average distance is 278 miles, or 4 miles greater than the average of 274 miles to the same destinations from the 5 origins on the Chicago & Eastern Illinois in that district. From the Illinois Central points in this group to the 4 representative destinations to which it maintains single-line rates, the average distance is 317 miles, or 43 miles greater than over the routes of the Chicago & Eastern Illinois. The average present rate of the Milwaukee and the Illinois Central is $1.90 and that proposed $2.01; over the Chicago &

Eastern Illinois routes to the same destinations, in a number of which the Milwaukee and the Illinois Central participate as line-haul delivering carriers, the average present rate is $1.97 and that proposed $2.08. In other words, the present and the proposed rates of the Milwaukee and the Illinois Central are lower by 7 cents for greater average distances of 4 and 43 miles, respectively, than those from mines on the Chicago & Eastern Illinois applying over routes in which either the Milwaukee or the Illinois Central participate to each of the destinations. The single-line rates of the Milwaukee from the Brazil and Linton groups apply generally for all deliveries at each destination to which they are published; for example, to Rockford the rates apply for deliveries on 4 destination carriers serving that point, the Milwaukee absorbing the switching charges of the other lines.

To Beloit, the relative situation with respect to the dual basis of rates as proposed is little different from that to northern Illinois. Thus, from the Milwaukee origins in the [fol. 304] Brazil district the average distance to Beloit is 244 miles; from points on the Chicago & Eastern Illinois it is 262 miles; and from points on the Baltimore & Ohio, 261 miles. The proposal is to continue the present rate of $2.40 from the Milwaukee mines and increase the rate to $2.27 from the other mines. From the Linton group the distance from the origins on the Milwaukee is 287 miles and from those on the Chicago & Eastern Illinois 288 miles, but the rate from the former is to be $2.20 and from the latter $2.32. From Princeton the average distance from the 6 points on the Southern to Beloit is 366 miles and from the 4 origins on the Algers, Winslow & Western it is 370 miles, as compared with 352 miles from the mines on the Chicago & Eastern Illinois and 376 miles from those on the New York Central, but the rate, which is the same now from the entire group, is to be $2.27 from the mines on the Southern and the Algers, Winslow & Western and $2.39 from the other mines in the group.

As stated, both the Milwaukee and the Illinois Central join in the so-called normal rates, by which is meant the rates maintained or proposed by most of respondents, from mines in the Brazil or Linton districts to the same destinations to which they maintain their lower single-line rates. They also participate in the rates, all of which are joint-line, from the Princeton and Boonville groups to the same

destinations. Thus, those two respondents participate in rates from the respective Indiana districts which reflect differences that, between many of the origins, are much greater than the so-called standard differentials. To Rockford, for example, the present and the proposed differential between the Brazil origins on the Milwaukee and the Linton origins on a majority of respondents is and would be 22 cents, instead of the customary 10 cents; between the Linton points on the Milwaukee or the Illinois Central and the Princeton mines the present and the proposed differential is and would be 19 cents, instead of the usual 7 cents; and between those same Linton origins and the Boonville mines the difference reflected by the present and the proposed rates is 22 cents, instead of the standard differential of 10 cents or the differential herein approved of 7 cents. What has just been said would be true also under the proposed adjustment to Beloit.

From several of these origin groups to a number of points in the destination territory the present and the proposed rates from certain mines are higher than the so-called normal rates. For example, from the Brazil and Linton groups to Byron, Ill., one of the 12 representative points, the rates from the mines on the Pennsylvania and the New York Central are 7 cents higher than those from the mines on the other respondents, except the Milwaukee, in those groups, for average distances only 24 miles from Brazil and 11 miles from Linton greater than the average from all mines in the respective districts. So also, to Forreston the normal proposed rate from Princeton is $2.12, but from mines on the Algers, Winslow & Western in that group it is $2.19, although the average distance from the latter mines is 28 miles less than the average from the group. A like situation prevails to some of these destinations from several of the Illinois groups, as illustrated in appendix A. The record reveals no explanation for such rates which are higher than the so-called normal rates from the same districts to the same destinations.

[fol. 305] Respondents would anticipate the same relative movement from the Brazil and Linton groups under the proposed rates as under the present rates. In a recent period said to be representative, but not detailed of record, of the total Brazil and Linton tonnage moved to Rockford, the Milwaukee transported under its single-line rates 95.4 percent from the Brazil group and 78.5 percent from the Linton

group. There was some movement from the other mines in each of the groups, but apparently it was relatively small. Nevertheless, the only justification offered by the Milwaukee for insisting on lower rates than those of the other carriers, except the Illinois Central from the Linton group, is its fear that there would be relatively little movement from mines served by it if its rates were made the same as those from the mines on the competing carriers to the same destinations. Apparently this fear is based chiefly upon the belief that the Brazil rates should not exceed the rates to the same destinations from the Springfield group, which is the case generally to points in the Northwest, as that term is herein used. As stated, the Southern is reluctant to increase its Princeton and Boonville rates to Beloit without an increase in the rates from southern Illinois to the same point. It seems plain, however, that the attitude of both the Southern and the Illinois Central in this respect is motivated largely by the relatively low rates from the Brazil and Linton groups maintained or herein proposed by the Milwaukee. Respondents appear to be agreed that all of these rates are relatively low and should be increased, and that, given a fair relation between the respective origin groups, a single rate from all of the mines in each group to each destination is much to be preferred to any multiple basis of rates such as that now in effect and as is here proposed.

The transportation conditions over the single-line routes of the Milwaukee and the Illinois Central do not differ materially from those over the joint-line routes to the same destinations from other mines in the same group, in many of which latter routes, as stated, the Milwaukee and the Illinois Central participate. There is no important difference in the average distances over those respective routes. Normally, coal sales turn on a price difference of as little as a few cents a ton. Plainly, therefore, only by the establishment and maintenance of a single rate basis from each of these coal-rate districts can unjust discrimination and undue prejudice be avoided. Under the circumstances recited, an extensive showing of injury through the loss of tonnage to particular coal shippers or consumers by reason of the discriminatory rates here before us is not required. *United States* v. *Trucking Co.*, 310 U. S. 344. The situation presented is in principle similar to that before us in *Fairbanks-Morse & Co.* v. *Alton & S. R.*, *supra*, pages

201-206, wherein we found that the maintenance of higher rates from 6 mines in the southern Illinois district to Janesville and Clinton Junction, Wis., was unduly prejudicial and preferential to the extent that they exceeded the contemporaneous rates to the same destinations from the other mines in the same district.

In *U. S.* v. *Chicago, M. St. P. & P. R. Co., supra*, the Supreme Court pointed out that we had "not adjudged the fairness of the relation now subsisting between Illinois and Indiana rates;" that "the whole situation is subject to the power of the Commission," in that we "may fix the fair relation between one line and another, and may build the [fol. 306] structure of the rates accordingly." This midwestern rate adjustment to these destinations cannot be stabilized, and fair and reasonable origin and destination relations maintained, so long as a multiple-rate basis applies from any of the important origin districts, such as the Brazil and Linton districts in Indiana. This is evident from the fact that the lower single-line rates of the Milwaukee from the Linton district have been met by the Illinois Central from mines in that district served by it, and from the proposal here to extend the dual basis to southern Wisconsin and to the only remaining Indiana group of any importance. Clearly, the time has come when these discriminatory practices and maladjustments should be eliminated. Accordingly, the record herein being adequate for the purpose, we shall now proceed to a determination of the fair and reasonable relations which should exist between the respective origin groups, and between the Indiana and the Illinois groups, to these destinations; and having made that determination, we shall except respondents, so far as lies within their respective powers, to establish and observe those relations.

The Fair and Reasonable Origin Relations.—In making this determination we shall leave out of consideration the rates from Alpha, Ill., and from the northern Illinois district to these destinations in northern Illinois for the reasons that most of those rates vary from the respective origins as well as to the different destinations, the movement thereunder is relatively small, or a large portion of it moves regularly by truck. Also, we shall exclude the rates to northern Illinois destinations from Atkinson because, with few exceptions, they are now higher than on the basis of the Indiana-Illinois scale and therefore on a

higher level than the reasonable interstate basis herein approved from Indiana to the same destinations. We shall take into consideration the rates from the Indiana groups, except for the reasons stated the Evansville group, and the rates from all Illinois groups, Fulton-Peoria and south or southeast thereof, together with the rates from Victoria and Rushville, Ill. As stated, the chief concern of the Indiana shippers, as well as of the Milwaukee, is with competition from the southern Illinois or the Springfield group.

The operating conditions of respondents from the respective Indiana and Illinois groups to these northern Illinois destinations are in general substantially similar. We have so found in a number of cases. See *Illinois Classification*, 55 I. C. C. 290, 301; *Intrastate Rates Within Illinois*, 60 I. C. C. 92; *Jones & Laughlin Steel Corp.* v. *Baltimore & O. R. Co.*, 96 I. C. C. 682, 691; *Burlington Shippers Asso.* v. *Atchison, T. & S. F. Ry. Co.*, 109 I. C. C. 694, 698; *Intrastate Rates on Bituminous Coal in Illinois*, *supra*, page 555. No serious attempt was made upon this record to show the contrary. Differences in competitive conditions, where they exist, reflect themselves largely in the statistics of production and tonnage moved from the respective groups, which will now be considered.

The years 1923 and 1936 are generally regarded as approximating normal in the coal industry and will be used as a base. The year 1941 is the latest period for which fairly complete tonnage results are of record. To Rockford, Freeport, and Dixon 369,492 tons moved from Illinois and 99,661 tons from Indiana in 1936, and 431,472 and 247,407 tons, respectively, in 1941, an increase of 16.8 percent from Illinois and 148.2 percent from Indiana. To Beloit, Illinois mines shipped 85,432 tons in 1936 and 80,100 tons in 1941, as compared with 35,346 and 51,450 tons, respectively, from Indiana, a decrease from Illinois of 6.2 percent and an [fol. 307] increase from Indiana of 45.6 percent. In that period the movement to Beloit and 7 of the representative northern Illinois destinations increased 4 percent from Illinois and 121.4 percent from Indiana.

The total movement to all Illinois destinations, except to points in the Chicago switching district and East St. Louis, in 1941 was 104.4 percent of that in 1923 from Illinois and 86.3 percent from Indiana, and the 1941 tonnage was greater than in 1936 by 46.5 percent from Illinois and 20.8 percent from Indiana. To all Indiana destinations, except

those in the Chicago switching district, the total tonnage declined from 1936 to 1941 by 12.5 percent from Illinois and increased by 32.5 percent from Indiana, and the 1941 tonnage was only 38.2 percent of that in 1923 from Illinois, as compared with 77.8 percent from Indiana. The total tonnage shipped from Illinois mines in 1941 was 61.5 percent, and that from Indiana mines 85.9 percent, of that in 1923.

From the respective groups the ratio of the 1941 total tonnage to that of 1923 was 222.9 percent from Fulton-Peoria, 96.6 from northern Illinois, 67.1 from central Illinois, which includes Springfield, 44.9 from Belleville, 92.2 from DuQuoin, and 48.6 from southern Illinois, as compared with 37.4 percent from Brazil, 75 from Linton, 288.1 from Princeton, and 63.7 from Boonville. Fulton-Peoria has increased its tonnage from 3.6 percent of the total Illinois production in 1923 and 8.2 percent in 1936 to 13.2 percent in 1941. The Brazil group has dropped from 34.5 percent of the total Indiana production in 1923 to 15 percent in 1941, in which year it shipped only 19 percent of the total Indiana coal moved to all Illinois destinations. The Princeton group during that period increased its production from 11.8 to 39.6 percent of the total Indiana production, the latter percentage for 1941 being for the first time greater than that for the Linton group (38.1 percent).

The ratio of the tonnage produced in the Boonville group to the total in Indiana has declined from a peak of 32.5 percent in 1928 to 8 percent in 1936 and 7.3 percent in 1941. There are 8 origin points in the Boonville group, but the only mine in the group which has been for sometime producing any substantial quantity of coal is that of the Sunlight Coal Company located about 10 miles across country from another mine in the Princeton group, both producing coal from the same seam. The Sunlight Company urges that it be accorded the Princeton rates and that the Princeton group as so constituted be given the usual 7-cent differential over the lowest present rates (those from the mines on the Milwaukee and Illinois Central) from the Linton group. In 1941 and the first 6 months of 1942, the only periods for which the tonnage statistics are of record, Boonville shipped only 3,063 tons to 7 of the principal northern Illinois destinations and to Beloit. The southern Illinois shippers favor the merger of the Boonville with the Princeton group, and there appears to be no dissent there-

from by any party to this proceeding. The shortest routes from a number of mines in the Princeton group to points in the destination territory are longer than the routes from mines in the Boonville group to the same destinations. As appears from appendix D hereto, a merger of the two [fol. 308] groups would increase the Princeton distance by only 8 miles, both on the average to the 12 representative northern Illinois destinations and to Beloit. We find that the Boonville rates to all of these destinations in northern Illinois and to Beloit should not exceed the rates herein approved from the Princeton group to the same destinations.

In appendix D may be found the average distances and the average rates, present and proposed, from the respective Illinois and Indiana groups to the 12 representative destinations and to Beloit. The average of the proposed rates to the 12 destinations is $1.98 for 256 miles from the Brazil district, and $2.03 for 293 miles from the Linton district, or a spread of 5 cents for 37 miles. So also, to Beloit the average of the rates under the proposed adjustment is $2.25 from Brazil, 269 miles, and $2.28 from Linton, 302 miles, or a spread of only 3 cents for a difference in distance of 33 miles. The standard differential, in effect generally to the Northwest, is 10 cents. As stated, the decline in the volume of the movement from the Brazil district since 1923 has been much greater than that from the Linton district, and that from the Princeton district has substantially increased. We find that the differential between the Brazil and Linton districts to these destinations, including Beloit, should be 10 cents.

If the proposed rates from the Indiana groups which are higher than the so-called normal basis were reduced to the latter basis, and if the single-line rates of the Milwaukee and the Illinois Central from the Linton district were increased to the normal basis proposed from the other mines in that group, the rates from all of the Brazil mines made 10 cents less, and the Princeton-Boonville rates made 7 cents more, the resulting rates to the 12 destinations would average $1.95 from Brazil, $2.05 from Linton, and $2.12 from Princeton-Boonville. Such rates, referred to hereinafter as approved rates, compare favorably with the proposed rates from the Illinois groups to the same destinations, with the exception of certain of the rates from the Fulton-Peoria, Danville, and Du Quoin groups.

To Geneva, the nearest point in this destination territory to Chicago, the present rate from Fulton-Peoria, 189 miles, is $1.65 and that proposed $1.70, except that from 7 origins (out of 27 origins in the district) on the Chicago & North Western and Toledo, Peoria & Western railroads the rate is $1.50 and that proposed $1.55. These rates appear to be out of line with the rates to other nearby points, such as DeKalb. The rate to the latter point is $1.50 and that proposed $1.55, for 166 miles. The Fulton-Peoria rate to Chicago is $1.65, for 186 miles. The average distance to Geneva, from the points taking the present rate of $1.50 is 171 miles, or only 18 miles less than from the points taking the present rate of $1.65. That difference is the same as that between the distance from the Peoria mine and the average distance from the Fulton County mines on the Chicago & North Western, for which that respondent maintains the same rate of $1.50 to Geneva. The Chicago & North Western [fol. 309] participates in all of these Fulton-Peoria routes to Geneva. We find that a reasonable and non-discriminatory rate under section 13 of the act from all of the Fulton-Peoria mines to Geneva may not be less than $1.60.

The Danville group is served by the New York Central and Chicago & Eastern Illinois, and the Du Quoin group is served only by the Illinois Central. It will be noted from appendix D that the proposed rates to the 12 destinations average $1.90 from Danville for 214 miles and $1.83 from Springfield for 225 miles, or a greater rate from Danville by 7 cents for a shorter distance by 11 miles. Danville is one of the smallest groups in Illinois and its movement is relatively light. To 8 of the 12 destinations the distances from Danville are shorter than those from Springfield, but to only 5 of those 8 destinations are the proposed rates the same as those from Springfield. To the other 3, namely, Amboy, DeKalb, and Geneva, the proposed rates of $1.89, $1.85, and $1.85, respectively, are 10 or 14 cents higher for shorter distances by from 15 to 64 miles from Danville than from Springfield, and are from 102.8 to 105 percent of the Indiana-Illinois scale. The present rate from the Danville group to each of these 3 destinations is $1.80, and we find that no increase in this rate to those destinations is here warranted. By combining the present rate to those 3 points with the proposed rates to the other 9 of the 12 destinations, the resulting average of the rates, herein approved under section 13 of the act, from the Danville group is $1.88, which

for the average distance of 214 miles is 94 percent of the Indiana-Illinois scale and 82.1 percent of the Midland scale.

The average of the proposed rates from the Du Quoin group to the 12 destinations is $2.10, for an average distance of 300 miles, which is relatively high compared with the proposed average of $2.05 for 327 miles from Belleville and $2.14 for 354 miles from southern Illinois. Du Quoin is not uniformly related to either Belleville or southern Illinois to these destinations, but in general it takes a somewhat higher rate than the former and a slighly lower rate than the latter. The distance from Du Quoin to each of the 12 destinations is the same or less than that from Belleville, and on the average is less by 27 miles. In *Midland Electric Coal Corp. v. Chicago & N. W. Ry. Co., supra*, we prescribed differentials of 5 or 10 cents, Belleville under Du Quoin, for average differences of from 17 to 48 miles to the respective Iowa zones. To Chicago, the Du Quoin and Belleville groups take the same rates. We find that the proposed Du Quoin rates have not been justified under section 13 of the act where and to the extent that they exceed the proposed Belleville rates to the same destinations. The rates thus approved, as shown in appendix A to this report, from Du Quoin to the 12 destinations average $2.06, or 89.6 and 73.8 percent of the respective scales.

The average approved rate of $1.95 from Brazil to the 12 destinations for 256 miles is 88.6 percent of the Indiana-Illinois scale and 76.5 percent of the Midland scale, which compares favorably with the foregoing average approved rate from the Danville group, with the average proposed rate of $1.83 to the same destinations from Springfield for 225 miles, 91.5 and 75.6 percent of the respective scales, and with the average proposed base rate of $1.59 from Fulton-Peoria for 159 miles, 93.5 and 84.6 percent of the scales. The average rate of $2.12 approved from the Princeton-Boonville group for 366 miles is 83.5 and 67.9 percent of the respective scales, as compared with an average proposed rate of $2.14 for 354 miles from southern Illinois, 84.3 and 68.6 percent of the scales.

[fol. 310] From Linton the approved rates average $2.05 for 293 miles, or 89.1 and 73.5 percent of the scales, and compare favorably with the approved rates from the Du Quoin group, as well as with the average proposed rate of $2.03 from the Centralia group, 283 miles, which is 88.3 and 72.8 percent of the respective scales. As will be noted from

appendix D, these Linton rates are on a slightly higher level than those proposed and herein approved from Belleville, the latter averaging 83.3 and 68.1 percent of the scales. Belleville is one of the largest midwestern districts, but in recent years the movement therefrom to these destinations, excepting only Rockford, has been relatively small, especially as compared with that from the Linton, Princeton, and southern Illinois groups. With few exceptions, the uniform differential, Belleville under southern Illinois, to these destinations, to Chicago, and to numerous points in the Northwest is, and long has been, 10 cents. There is upon this record no adequate support for requiring a change in that differential.

In considering the level of the rates from the respective Indiana and Illinois groups to these destinations, as well as to Beloit, it must be borne in mind that the differential between Linton and Princeton, the two most important Indiana groups, is only 7 cents for an average difference in distance to these 12 destinations of 65 miles (73 miles from the combined Princeton and Boonville groups). That differential is on a lower level than any other between important groups in this midwestern adjustment. Since it is of long standing, is in effect generally throughout the Northwest, and is not here sought to be changed, we do not feel warranted in approving its disturbance. That low differential necessarily reflects itself in relatively higher rates from the nearer Indiana groups, as well as relatively lower rates from the more distant Indiana group or groups, than might otherwise be warranted.

In the foregoing discussion we have given no specific consideration to the intrastate rates from Rushville and Victoria, neither of which is grouped with any other origins. The mine at Rushville is located on the Burlington about 40 miles, on the average, southwest of the Fulton-Peoria group. The present rates therefrom to the northern Illinois destinations are generally 5 cents higher than the Fulton-Peoria rates and this relationship is proposed to be continued. Victoria is a short distance north of the Fulton-Peoria group on the Galesburg & Great Eastern Railroad, which connects with the Burlington at a point 10 miles from the Victoria mine. This mine produces annually about one-half million tons of coal, most of which is sold commercially and a substantial portion thereof moves to points in northern Illinois. Its rates are generally the same as those

from Fulton-Peoria and that relation is proposed to be continued. The average distance to the 12 northern Illinois destinations is 149 miles or 40 miles shorter than from the Fulton-Peoria group. Some of the Victoria rates now exceed the Indiana-Illinois scale. Thus, to Byron and Dixon, 134 and 110 miles, respectively, the present rates exceed the scale basis by 4 and 7 cents, respectively. Intrastate rates which to these northern Illinois destinations exceed rates on the basis of the Indiana-Illinois scale are on a higher level than the reasonable interstate adjustment herein approved, and no change in any such intrastate rates is contemplated under our findings in this report.

[fol. 311] Taken as a whole, the combined rates herein approved from Indiana to the 12 northern Illinois destinations average 86.1 percent of the Indiana-Illinois scale and 70.7 percent of the Midland scale and the combined rates herein approved from the Illinois groups to those destinations average 85.4 and 70.3 per cent of those scales. We believe that the rates or rate bases above indicated, which are set forth more specifically in appendices A and D hereto, will afford fair and reasonable relations of rates to northern Illinois destinations, both as between the respective origin groups and as between the Indiana groups on the one hand, and the Illinois groups on the other.

In arriving at the foregoing conclusion we have not overlooked the contention of a cement manufacturing plant at Dixon, which is in competition with other such plants at La Salle, Ill., and nearby points, that the proposed increase from $2 to $2.05 in the rate from southern Illinois to Dixon should be found not justified because no increase is proposed in the present rate of $2 from the same group to La Salle. The latter point, however, is about 40 miles less distant from southern Illinois than Dixon, and the proposed rate to the latter point is 86.1 per cent of the Indiana-Illinois scale as compared, for example, with 88.6 per cent of that scale reflected by the proposed rates to Rockford and Freeport. The average distance from southern Illinois to Dixon is within 1 mile the same as that to Amboy, to which the proposed rate is also $2.05.

We have considered, also, the claim of Middle States Fuels, Inc., and Northern Illinois Coal Trade Association that the Fulton-Peoria rate of $1.50 to Dixon, 124 miles, is even now too high, and that the proposed increase to $1.55 should be found not justified. These interests compare this

proposed rate with several other rates, typical of which is a rate from Fulton-Peoria of $1.33 for 134 miles to Clinton, Iowa. That rate, applying as it does from a base group, is only 83.1 per cent of the Indiana-Illinois scale. The proposed rate to Dixon compares favorably with other proposed rates from the same group for like distances. Thus, the same rate of $1.55 is proposed from Fulton-Peoria to Rochelle, 126 miles, and to Amboy, 140 miles, the latter point south of and intermediate to Dixon over some routes, so that if the Dixon rate were found not justified, the same finding would have to be made as to the proposed rates to a number of other points in the lower tier of these northern Illinois destinations. None of these intrastate rates herein approved is on a higher level than the Indiana-Illinois scale.

To Beloit, the relative situation as a whole differs from that to northern Illinois only in that on coal it is located at the edge of a territory which, because of less favorable transportation conditions, properly takes somewhat higher rates than does northern Illinois and somewhat lower rates than to Wisconsin points farther north or to Iowa, and in that the rates to that point from Illinois groups, from Brazil and Linton mines on the Milwaukee, from Princeton mines on the Southern and the Algers, Winslow & Western, and from Boonville are not here proposed to be changed and therefore are not specifically in issue in this proceeding. In No. 28888, *Middle States Fuels, Inc.* v. *Atchison, T. & S. F. Ry. Co.*, decided concurrently herewith, we have found the rates on coal therein assailed from Fulton-Peoria to Beloit not unlawful, except that the present rate of $1.94 from Atkinson is found unreasonable and required to be reduced to the group rate of $1.80.

[fol. 312] Under the proposed adjustment the average rate from the Brazil district to Beloit would be $2.25 and that from Linton $2.28, or an average spread of only 3 cents. The present differential between those groups is now uniformly 10 cents, which because no change in the rates is proposed would be continued from the mines on the Milwaukee, but from all other mines would become 5 cents. We have hereinbefore found that this differential should continue at 10 cents. As stated, respondents, except the Milwaukee, propose to increase the Brazil rates to Beloit by 17 cents to $2.27, and those from Linton by 12 cents to $2.32. If the rates from all of the mines in each of the

Indiana groups to Beloit were increased to $2.22 from Brazil, $2.32 from Linton, and $2.39 from the combined Princeton-Boonville group, the standard differentials of 10 and 7 cents, respectively, would be continued and, considered as a whole, the resulting rates would compare favorably with the present rates to Beloit from the Illinois groups. A rate of $2.22 from the base Brazil group for 269 miles is 100.9 per cent of the Indiana-Illinois scale and 83.1 per cent of the Midland scale, which may be compared with the present rate of $1.80 to Beloit from the base Fulton-Peoria group for 170 miles, reflecting, respectively, 100 and 89.1 per cent of the scales, and a rate of $2.10 from Springfield, 276 miles, 91.3 and 78.7 per cent of the scales. While the latter rate is on a somewhat lower level than that approved from Brazil, it is the customary 30 cents under southern Illinois to points in southern Wisconsin and the rate of $2.40 from the latter group, 394 miles, which is 91.6 and 74.3 per cent of the respective scales, is on a slightly higher level than the approved rate of $2.39 from the combined Princeton-Boonville group for 387 miles. The latter is 91.2 and 74 percent of the scales. This seeming inconsistency is again brought about by the relatively low 7-cent differential, Princeton over Linton, which to Beloit now applies for a difference in distance of 77 miles and under the basis herein approved will apply for a difference of 85 miles. The approved Linton rate to Beloit of $2.32 for 302 miles is 80 per cent of the Midland scale, as compared with present rates of $2.35 for 322 miles from Du Quoin, 81 per cent of the scale, $2.30 for 358 miles from Belleville, 73.7 per cent of the scale, and $2.30 for 283 miles from Centralia, 82.4 per cent of the scale.

Taken as a whole, the rates herein approved from Indiana to Beloit average 94.3 per cent of the Indiana-Illinois scale and 77.1 per cent of the Midland scale, and the combined present rates from Illinois to that point average 92.9 and 76.6 per cent of the respective scales. We believe that, differences in the levels of the origin differentials considered, the foregoing average rates from the respective Indiana groups to Beloit are reasonable per se and in their relation to each other, and to the rates from the Illinois groups to the same destination.

Rates established on the foregoing bases will result in a uniform spread of 15 cents Beloit over Rockford from all

Indiana and Illinois groups, except Du Quoin. There are 9 origin points in the Du Quoin district, of which 8 are served by the Illinois Central and 1 by the Missouri Pacific. All of these mines take a common rate to Beloit and to the Northwest generally, as well as to Chicago and numerous points in northern Illinois, but to Rockford and a few other points in northern Illinois, for an unexplained reason, the [fol. 313] present and the proposed rates from 2 of the 8 origins on the Illinois Central in the Du Quoin district are 5 or 10 cents less than the rates from the other points in that group, although the average distance from the 2 origins is about the same as the average from the other 6 origins on the Illinois Central. Thus, to Beloit the rate, not proposed to be disturbed, from all Du Quoin mines is $2.35 for 322 miles, but to Rockford the proposed rate from all origins except 2 on the Illinois Central is $2.20 for a short tariff-route distance of 326 miles and from the 2 excepted points is $2.15 for 327 miles. The rate herein approved from all points in the Du Quoin district to Rockford, 304 miles, is $2.15, the same as that from Belleville, 332 miles. This would result in a spread Beloit over Rockford from Du Quoin of 20 cents. The difficulty seems to be with the rate to Beloit, which for 322 miles is 5 cents higher than the rate of $2.30 from the Belleville group for 358 miles, or a higher rate by 5 cents for a shorter distance by 36 miles. We have hereinbefore found that to the northern Illinois destinations the proposed Du Quoin rates have not been justified where and to the extent that they exceed the proposed Belleville rates. The Belleville rate should also be observed as maximum from all Du Quoin mines to Beloit. The resulting spread between Beloit and Rockford will thus be uniformly 15 cents from all origin groups.

In approving the foregoing rate relations we have kept in mind the importance to consumers, coal operators, and railroads of relating these differentially-related coal rates, not strictly upon distance, but so as to afford all concerned a fair opportunity to compete in the purchase, sale, and transportation of coal from Illinois and Indiana mines to these destinations. The rates between the various origin groups in these fields have never been made with primary regard for distance, and to so make them now would have the effect eventually of eliminating practically all competition between most of them, a result which would be highly undesirable to the consumer, whose interests we may not disregard. *Illinois Coal Traffic Bureau* v. *Ahnapee*

& W. Ry. Co., supra, page 240. And in according such weight to distance as seemed to us to be fair and reasonable, we have also kept in mind that the average distances of record, and as used in this report, especially from Illinois mines, frequently reflect seeming inconsistences from the same group to destinations in close proximity to each other. For example, Amboy is located south of and about 12 miles over the Illinois Central and across country less distant from the Illinois groups than Dixon, but the average shortest-tariff route distance from the Springfield group is 9 miles greater and from the southern Illinois group 1 mile greater to the former than to the latter. By use of the short tariff routes the distance to Amboy is 9 miles greater from Springfield and 7 miles greater from southern Illinois than to Dixon. These variations in distance are due to the different routes used and also to the fact that frequently the group rate applies from a larger number of origins to one destination than to another. Thus, to Dixon the Springfield rate is published from 61 origins on 15 originating railroads, but to Amboy the rate applies from only 23 origins on 8 railroads. So also, the southern Illinois rate applies from 75 origins on 7 roads to Dixon and 65 origins on 5 roads to Amboy. The variations in distance thus brought about are much greater from Illinois groups than from Indiana groups. It is plain, therefore, that comparisons based on distance, especially as between Indiana and Illinois groups to particular destinations, can not be accepted as controlling, but must be evaluated with the above facts in mind.

[fol. 314] *Western Kentucky.* — The western Kentucky group is served by the Illinois Central and the Louisville & Nashville. Its rates to this destination territory are uniformly 35 cents over those from southern Illinois. Coal shippers in that group introduced no evidence, but they ask that the proposed rates to the northern Illinois destinations be found not justified to the extent that those from western Kentucky exceed by more than 25 cents the rates proposed from the southern Illinois and Princeton groups. The distances over the shortest tariff routes from western Kentucky are not of record. The average short tariff-route distances to the 12 destinations are 435 miles from western Kentucky, 361 from southern Illinois, and 359 from Princeton, and the respective rates proposed by respondents are $2.49, $2.14, and $2.13, reflecting an average increase from

each group of 9 cents. Western Kentucky's differential is thus 35 cents over southern Illinois for an additional haul of 74 miles and 36 cents over Princeton for an additional haul of 76 miles. In the first 6 months of 1942, the latest period for which the tonnage results are of record, the movement to Beloit and to 7 of the 12 representative northern Illinois destinations was 38,922 tons from western Kentucky, 68,595 tons from Princeton, and 300,153 tons from southern Illinois.

In *Commonwealth of Kentucky* v. *Illinois Central R. Co.*, 253 I. C. C. 779, 259 I. C. C. 259, decided on rehearing December 11, 1944, we found unreasonable the rate of $2.40 from western Kentucky to Chicago and intermediate points to the extent that it exceeded or might exceed $2.30, or 25 cents over southern Illinois. The difference in the actual distances over the short tariff routes from western Kentucky and southern Illinois to Chicago was there found to be 61 miles. Among those intermediate points were a number of the destinations to which the western Kentucky rate in the instant proceeding is proposed to be increased by 5 cents to the Chicago basis of $2.40, or 35 cents over the proposed rate of $2.05 from southern Illinois. Of the 12 representative northern Illinois destinations hereinbefore used, 6 fall in that category of points intermediate to Chicago. To those 6 destinations the average difference in distance western Kentucky over southern Illinois is 73 miles, or only 12 miles greater than the difference to Chicago. To Illinois destinations farther north, the difference in distance is generally greater than to the lower tier of destinations, as it is also to points in Wisconsin and Iowa. Thus, to Burlington and Madison, Wis., the differences are, respectively, 88 and 92 miles and to Clinton and Davenport, Iowa, 79 and 96 miles. In the report on rehearing just referred to we said:

> The conclusion is warranted that the present differential of 35 cents to Chicago and the 50-cent differential proposed by defendants and Illinois-Indiana interests to the entire Northwest[3] are amounts substantially

[3] The term "Northwest," as used in the report on rehearing in that proceeding, includes North Dakota, South Dakota, Minnesota, Nebraska, Iowa, Wisconsin, and that portion of Illinois on and north of a line drawn through Quincy, Springfield, Decatur, and Danville.

greater than justified by the relatively unfavorable transportation conditions from western Kentucky, and that, considering the levels of the rates and differentials generally, these transportation conditions are amply reflected in the differentials of 25 and 35 cents which were prescribed and approved in the prior report to Chicago and the remainder of the Northwest, respectively.

[fol. 315] The evidence bearing upon differences in transportation conditions as between western Kentucky on the one hand, and the Illinois and Indiana groups on the other, to the Northwest, as that term was used in that proceeding, including these northern Illinois destinations, was much more complete there than here. Accordingly, the rates herein proposed by respondents from western Kentucky are found not justified to destinations intermediate to Chicago where they reflect a differential over southern Illinois greater than 25 cents, and are found justified to Illinois destinations farther north where they reflect the present differential over southern Illinois of 35 cents.

The Price Administrator's Contentions.—In behalf of the Price Administrator it was testified that coal dealers would be unable to absorb additional transportation costs at this time, that to avoid losses such dealers would require higher price ceilings on coal, and that ultimately the increased transportation costs herein proposed, if permitted to take effect, would be passed on to the consuming public, thus conflicting with the Government's war-time stabilization program. There was no testimony by coal dealers themselves. The Price Administrator contends that respondents have failed to show that any of their proposed increases are required to enable them to pay maintenance and operating costs and yield a fair return upon the value of their properties. Accordingly, he asks that the proposed increased rates be found not justified.

The important matter here before us is the elimination of gross inequities, discriminations, and unfairness as between (1) the respective levels of the interstate rates from Indiana and western Kentucky on the one hand, and the intrastate rates from Illinois on the other, to these northern Illinois destinations, and (2) the respective levels of those interstate and intrastate rates to northern Illinois on the one hand, and the interstate rates from the same

origins to points in southern Wisconsin and eastern Iowa on the other, all upon a fair and reasonable level. Such an adjustment requires increases as well as some reductions.

In reaching our conclusions herein, we have weighed carefully the contentions of the Price Administrator. We think the importance of establishing a reasonable, nondiscriminatory, and stable adjustment of rates to these northern Illinois destinations outweighs the stabilization considerations raised by him. *I. C. C. v. Jersey City*, 322 I. C. C. 503.

[fol. 316] The Section 13 Issue

Respondents in No. 28881 contend, and they undertook to prove, that the present Illinois intrastate rates to these northern Illinois destinations are unduly prejudicial and preferential, and unjustly discriminatory against interstate commerce, in their relation to the present interstate rates from the same Illinois origins to southern Wisconsin and eastern Iowa, in violation of section 13. As illustrated in appendix B, the present intrastate rates are on a substantially lower level than the present interstate rates from Illinois groups to nearby points in Wisconsin and Iowa, most of which have been approved by us and under all of which there is a substantial movement. Thus, the present intrastate rates to the 12 representative northern Illinois destinations average 87.5 percent of the Indiana-Illinois scale and 72.3 percent of the Midland scale from the Springfield group and 80.7 percent and 65.7 percent, respectively, from the southern Illinois group. But to the 5 representative points in southern Wisconsin (other than Beloit) shown in appendix B, the interstate rates average 108 percent of the Indiana-Illinois scale and 88.6 percent of the Midland scale from the Springfield group, and 103.2 percent and 83.2 percent, respectively, from southern Illinois, and to the 8 representative points in eastern Iowa shown in the same appendix the interstate rates average 102.4 percent of the Indiana-Illinois scale and 88.8 percent of the Midland scale from the Springfield group and 98.8 percent and 80.4 percent, respectively, from the southern Illinois group.

There is of record much testimony bearing upon the operating conditions from representative Illinois origins to northern Illinois and to southern Wisconsin and eastern Iowa. This testimony deals specifically with only 5 of the many railroads involved, and with the operations from one

or several points in particular groups, but we find it sufficiently illustrative to enable us to form an intelligent opinion with respect to the relative transportation conditions from the Illinois groups to the northern Illinois destinations, on the one hand, and to points in southern Wisconsin and eastern Iowa, on the other. For most or all of the haul to the northern Illinois destinations and for the greater part of the distance to eastern Iowa and southern Wisconsin, coal from the Illinois origins to the northern Illinois destinations generally moves in the same trains and is given identical treatment as coal from the same origins to destinations in eastern Iowa and southern Wisconsin. Beyond the northern Illinois points to destinations in eastern Iowa and southern Wisconsin, because of differences in engine ratings and traffic density, the transportation conditions on coal are slightly, but only slightly, less favorable than they are to the points in northern Illinois.

The present intrastate rates from the combined Springfield and southern Illinois groups, which for this purpose we regard as representative of the entire Illinois group adjustment, to the 12 northern Illinois destinations average about 82.6 percent of the Indiana-Illinois scale and 68.1 percent of the Midland scale, as compared with 97.9 percent and 80.3 percent of the respective scales reflected by the representative rates approved by us from those groups to eastern Iowa shown in appendix B, and as compared with 103.1 percent and 83.6 percent of the same scales reflected by the representative rates approved by us and set forth in the same appendix from those groups to southern Wis- [fol. 317] consin. Measured by those scales, therefore, and no better standard of measurements is available, the present intrastate rates, on the average, are on a level approximately 15 percent lower than the interstate rates approved by us to eastern Iowa and about 19 percent lower than the interstate rates approved by us to southern Wisconsin. Such differences between the levels of the intrastate rates here assailed, on the one hand, and the reasonable interstate rates referred to, on the other, are greater than warranted by the differences in the transportation conditions. The intrastate rates herein approved reflect a relation to the reasonable interstate rates from the same origins to southern Wisconsin and eastern Iowa which is at least n[illegible] more favorable to the interstate traffic than is warranted by the

differences in the respective transportation conditions under which the intrastate and the interstate traffic moves.

Undue preference and Prejudice. Witness for respondents submitted a list of industries, some of which manufacture like commodities, located at Rockford and Freeport and at a number of points in eastern Iowa and southern Wisconsin, all of which receive substantial quantities of midwestern coal. The witness was not familiar with the competitive practices of the industries listed and could not say that any of them had been adversely affected by the present relations between the intrastate and the interstate rates. There is no evidence to indicate that any shipper or receiver of interstate coal has suffered injury or that any consumer has shifted from interstate to intrastate coal by reason of the present intrastate rates. Accordingly, the evidence is insufficient to warrant a finding of undue preference or prejudice under section 13 of the act. *Wisconsin R. R. Comm.* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563.

Unjust Discrimination. Taken as a whole, and excluding the rates from Illinois and Indiana groups to Chicago which are affected to an unusual degree by severe competition from the eastern or Appalachian fields, this integrated adjustment of Illinois intrastate and Indiana interstate rates to northern Illinois reflects the lowest level of any important track-delivery coal-rate adjustment in the country, even though transportation conditions in Illinois and Indiana are in general no more favorable than they are in various other sections of the country. *Intrastate Rates on Bituminous Coal within Ohio*, 192 I. C. C. 413, 428; *Coal from Indiana to Illinois*, 200 I. C. C. 609, 617; *Coal Trade Assn. of Indiana* v. *Algers, W. & W. Ry. Co.*, 232 I. C. C. 356, 363; *Ashland Coal & Ice Co., Inc.* v. *Atlantic C. L. R. Co.*, 241 I. C. C. 120, 137; *Fairbanks-Morse & Co.* v. *Alton & S. R., supra*, page 199. To the 12 representative northern Illinois destinations the intrastate rates with which we are here dealing yield from 9.6 mills per ton-mile from the base Fulton-Peoria group for an average distance of 159 miles, which is 89.4 percent of the Indiana-Illinois scale found to be reasonable maximum for this territory, to only 5.8 mills per ton-mile from the southern Illinois group for 354 miles, or 80.7 percent of the Indiana-Illinois scale. From all of the Illinois groups to those destinations they average only 6.6 mills per ton-[fol. 318] mile, for 284 miles. Such earnings, and even the

earnings under the Indiana-Illinois scale employed as a maximum for the rates approved in this report, are much below the average earnings on truck-delivery coal for comparable hauls throughout official territory.

It is a matter of common knowledge, of which we may take official notice, that with few exceptions the principal railroads, such as the Milwaukee, Chicago & Eastern Illinois, Wabash, Chicago, Indianapolis & Louisville, Baltimore & Ohio, and North Western, over which these relatively low rates from Indiana and Illinois groups apply, have been forced to undergo financial reorganization, still incomplete as to several of them, during the last decade because of the lack of sufficient revenues to meet their obligations. While such reorganizations where completed have reduced substantially the funded debt and the interest requirements of the carriers affected, it is important, if recurrence of such financial difficulties is to be avoided, that these rates on coal, which in general can bear its full share of the total transportation burden, be maintained on a level more nearly commensurate with the general level of such rates throughout official territory, of which this area in Indiana and Illinois is a part. The necessary and fair contribution to the revenues of those individual carriers from the coal traffic involved in this proceeding requires that the rates on the intrastate shipments shall not be on a lower level than that reflected by the rates or rate bases herein prescribed.

In 1941 the tonnage of intrastate coal from Illinois origins to the 7 representative destinations of De Kalb, Dixon, Freeport, Geneva, Rochelle, Rockford, and Sterling amounted to 508,322 tons and yielded to respondents a gross revenue of $967,468.50. Respondents are not apprehensive that the rate increases which they propose would divert from them any material quantity of coal. Their claim is that the proposed increases in the intrastate rates to those 7 desinations would augment their earnings by about $53,866.90 per annum, and that there would be a substantial revenue increase also to the other northern Illinois destinations affected.

If the rates as proposed, both interstate and intrastate, were permitted to take effect concurrently, respondents estimate that the additional revenue which would be yielded by the increased rates from Indiana and western Kentucky to the above-named 7 Illinois destinations, based on the 1941 tonnage, would be $50,648.30, or a total annual revenue

increase to those 7 points, dependent upon the increase in the intrastate rates, of $104,515.20. Of course, if no increase were permitted in the rates to Rockford, in order to bring about the 15-cent relation required under the order in *Fairbanks-Morse & Co.* v. *Alton & S. R., supra*, the rates to Beloit would have to be reduced in that amount, which based on the 1941 tonnage would reduce the carriers' annual revenues by $21,142. Should that order be complied with in such a manner, it is likely that the relatively low level of the rates to Beloit which would thus result would have to be given recognition at other points in southern Wisconsin, and this could be expected to bring about a further substantial reduction in the carriers' revenues.

There is some evidence which indicates that rate increases such as those here proposed might be expected to cause some diversion of coal from midwestern mines to mines in the Appalachian fields, and also from the railroads to the motor carriers, especially for the shorter hauls. We do not believe that any such diversion under the rates and rate relations herein approved would be substantial, except that for the shorter hauls from origins in the northern Illinois field, including Alpha, to destinations in northern [fol. 319] Illinois the increases proposed might bring about the diversion of important quantities of coal to the trucks. As will presently appear, the latter rates are exempted from our findings of unlawfulness herein under section 13.

Short-haul Rates. As stated, for the shorter hauls from Illinois origins north of the Fulton-Peoria group to these northern Illinois destinations the mines, which for longer hauls are generally treated by respondents as in the same origin district, are not grouped under a common rate to many of the destinations. For example, to De Kalb the present intrastate rates from mines in the northern Illinois district vary from $1.29 to $1.50 for average distances of from 57 to 116 miles, and to Byron they vary from $1.07 to $1.50 for average distances of from 88 to 119 miles. These rates are generally proposed to be increased by from 5 to 20 cents. There are local conditions, such as truck competition, which are peculiar to most of this short-haul traffic and which vary frequently as between the respective origins and destinations. Because of the relatively light movement under these short-haul intrastate rates, except those from Atkinson and Victoria, the absence of any manifested interest therein by the Indiana or the western Ken-

tucky operators, and the varying conditions which attach to them, with the 2 exceptions noted, we do not regard those rates as important to the section 13 issue here before us. As stated, the intrastate rates from Atkinson are now generally on a higher basis than the Indiana-Illinois scale. Accordingly, all of these intrastate rates from origins north of the Fulton-Peoria group, except Victoria, will be excluded from our findings of unlawfulness under section 13.

We have hereinbefore considered all of the evidence bearing upon the reasonable interstate bases from Indiana and western Kentucky and the fair and reasonable relations between such interstate rates, on the one hand, and the intrastate rates from the Fulton-Peoria and more distant groups or points to the northern Illinois destinations, on the other, and repetition here would serve no useful purpose.

The Jurisdictional Question. In exceptions to the examiner's proposed report the National Association of Railroad and Utilities Commissioners and the Attorney General of the State of Illinois call attention to the wording of section 13(4) of the act and urge that, since the present Illinois intrastate rates here assailed are not shown to be on a lower level than the present interstate rates from Indiana to the same destinations, this Commission has no power to require an increase in the intrastate rates concurrently with the establishment of whatever increased interstate rates may herein be approved from Indiana. Accordingly, they urge that the complaint under section 13 should be dismissed because premature, and that if we should here approve increased rates from Indiana to northern Illinois and the Illinois Commission should, in the proceedings before that body, approve a rate level for intrastate application lower than that approved by us for interstate use from Indiana, the way would then be open for the carriers to petition for the exercise of our corrective power under section 13.

The position of respondents in No. 28881, as clearly set forth in their briefs and oral argument, is that the intrastate rates assailed are unlawful, not as related to the interstate rates from Indiana or western Kentucky, but as related to the interstate rates presently in effect from Illinois origins to destinations in eastern Iowa and southern Wisconsin. The foregoing contentions in behalf of the State authorities, therefore, are based upon a misconcep-

tion of respondents' position and need not be further discussed.

[fol. 320] *Cooperation with Illinois Commission.* As stated, the Illinois Commission has cooperated with us in the hearing and disposition of this proceeding. In the consideration of a tentative final report herein, however, it developed that the Illinois Commission is not disposed to concur in any increase in the Illinois intrastate rates, chiefly, as we understand its position, because of its view that the 15-cent relation which we prescribed between Beloit and Rockford in *Fairbanks-Morse & Co.* v. *Alton & S. R., supra*, is too narrow and should be increased to 25 cents, and the schedules under suspension required to be canceled. The proceeding just referred to has not been reopened and the relation, as such, between the rates to Beloit and Rockford has not been specifically retried here; nevertheless, because of its bearing upon the section 13 issue, we have again carefully reviewed that relation and find upon this record no warrant for any modification therein. We are left with no alternative, therefore, but to approve or require a revision of the interstate and intrastate rates here before us which will result in what we regard, upon this record, as a reasonable and harmonious adjustment from all of these midwestern groups to the northern Illinois destinations, as well as to Beloit. In doing so, we have kept in mind that, taken as a whole from each State, the rates from Indiana and Illinois to these points in northern Illinois, excepting only the relatively low rates of the Milwaukee and the Illinois Central from the Brazil and Linton groups, are now generally on about the same level, and that because of the highly-competitive and interrelated nature of this adjustment it would be impracticable, as well as unjust, to increase either the Indiana rates generally or the Illinois rates without increasing all of them at the same time.

As stated, the entire midwestern adjustment to these northern Illinois destinations has been in a state of uncertainty for many years, chiefly because of the relatively low intrastate rates required to be established and maintained by the Illinois Commission. This adjustment can not be stabilized without an increase in the intrastate rates to those destinations, made concurrently with an increase in the interstate rates from Indiana and western Kentucky, upon bases fair and reasonable to all concerned,

such as is contemplated under the findings made and conclusions reached in this report.

[fol. 321]. Findings of Fact

Based upon the record before us, we make the following major findings of fact:

1. For more than 14 years the rates on coal from Illinois and Indiana mines to the northern Illinois destinations to which the proposed rates would apply have been relatively low in relation to the reasonable interstate rates as approved by us (a) for Illinois-Indiana territory, and (b), differences in transportation conditions considered, from Illinois mines to nearby points in Wisconsin and Iowa. In *Intrastate Rates on Bituminous Coal in Illinois, supra*, we declined to require increases in the relatively low intrastate rates from the southern Illinois group to Rockford, Freeport, and Dixon unless and until the rates on like traffic from the Indiana groups to the same destinations were increased more nearly to the basis of other interstate rates in the same territory. By the proposed rates here under review respondents have attempted to raise these relatively low rates more nearly to the maximum level approved by us as reasonable for this territory and at the same time to comply with our order in *Fairbanks-Morse & Co.* v. *Alton & S. R., supra*, prescribing a maximum spread of 15 cents, Beloit over Rockford, in the rates from Indiana, Illinois, and western Kentucky to those destinations.

2. In general, the proposed interstate rates compare favorably with interstate rates approved by us from Indiana to Illinois and, differences in transportation conditions considered, from Illinois to Iowa and Wisconsin, and do not exceed the maximum of reasonableness. However, they have certain defects which the law will not permit us to sanction.

3. When in 1932 respondents in *Intrastate Rates on Bituminous Coal in Illinois, supra*, failed, for the foregoing reasons, in their endeavor to increase the Illinois intrastate rates to northern Illinois destinations, the Milwaukee shortly thereafter, instead of joining with the other Indiana carriers in an effort to increase the rates from Indiana to those destinations so like action could be taken also with respect to the Illinois rates, reduced its single-line rates from mines served by it in the Brazil and Linton districts in Indiana

to Rockford, Freeport, and other northern Illinois destinations in the same amount as the Illinois intrastate rates to the same destinations had been reduced in 1930 upon order of the Illinois commission. This resulted in a dual basis of rates from the Brazil and Linton districts, that is, lower rates from mines on the Milwaukee than from mines on the other carriers serving those respective districts to the same destinations. Subsequently, the Illinois Central met the lower rates of the Milwaukee from the Linton district by establishing the same basis of rates from Linton mines served by it over its single-line routes to northern Illinois destinations. Respondents now propose to extend the dual basis of rates so it would apply also from the Indiana groups to Beloit.

4. The average distances over the single-line routes of the Milwaukee and of the Illinois Central are approximately the same as, and in some instances less than, those over the [fol. 322] joint-line routes from the same origin districts to the same destinations, and are little different from the average distances thereto from all of the mines in the respective districts. Nevertheless, the present and the proposed rates from mines on the Milwaukee and the Illinois Central are lower than the present and the proposed rates from the mines on the lines of the other respondents serving the Brazil and Linton districts. Both the Milwaukee and the Illinois Central participate in many of the routes over which such higher rates apply to the same destinations to which they maintain and are here proposing their lower single-line rates. Although only 4 of the 30 origins in the Brazil district and only about 9 of the 31 origins in the Linton district are served by the Milwaukee, in a recent representative period, of the total Brazil and Linton tonnage moved to Rockford, a representative destination, 95.4 percent from Brazil and 78.5 percent from Linton moved under the single-line rates of the Milwaukee. There is a movement from Brazil and Linton mines served by respondents other than the Milwaukee and the Illinois Central to these destinations, but it is relatively small. In general, all of the mines in these districts produce coal of the same quality and grade, and a difference of a few cents per ton in the transportation charge is normally sufficient to divert a coal contract from one mine to another.

5. The Milwaukee and the Illinois Central join in rates from the Princeton and Boonville groups to these northern Illinois destinations which reflect differences between those groups on the one hand, and the Brazil and Linton points served by those two respondents on the other, that are substantially greater than the so-called standard differentials and greater than are warranted by the respective differences in distance.

6. From several of the Indiana districts to a number of points in this destination territory, the present and the proposed interstate rates from a few mines in each of such districts are higher than the rates from the great majority of the mines in that district, although the average distances from such excepted mines approximate the average from the district as a whole. In the absence of any justification therefor, the rates from such mines should not exceed those herein approved from the respective districts of which they are a part.

7. Normally, there is severe competition in the marketing of coal in this destination territory between the mine operators in each of the origin groups, and between the respective Indiana, Illinois, and western Kentucky groups, and such competition has been and should continue to be given important consideration in the maintenance of the differentially-related and finely-balanced rate structure on this coal which is required to meet the needs of the consuming public, the mine operators, and the carriers concerned.

[fol. 323] 8. The transportation conditions under which coal moves from Indiana and Illinois groups to these northern Illinois destinations are sufficiently similar to require the use of the same rate basis from all of such groups. To southern Wisconsin and eastern Iowa the transportation conditions are somewhat more onerous and the rates thereto, especially beyond Beloit and Davenport or Clinton, should be on a slightly higher level than to northern Illinois.

9. The coal-rate adjustment from Illinois, Indiana, and western Kentucky groups to these northern Illinois destinations cannot be stabilized upon a reasonable and non-prejudicial basis unless and until the maladjustments and inconsistencies inherent in any multiple basis of rates from the respective origin groups are eliminated.

10. The proposed adjustment would continue the present maladjustments and inconsistencies, and would extend them

also to Beloit and to the Princeton group, thus laying the foundation for a further spread of the dual-rate basis to numerous additional points in Wisconsin.

11. The present interstate rates, except the single-line rates of the Milwaukee and the Illinois Central, from the Indiana groups to northern Illinois destinations are on approximately the same level as comparable rates now maintained from Illinois groups to the same destinations; and the relatively low rates from either the Indiana or the Illinois groups cannot be increased without at the same time increasing the rates from all of these groups.

12. Respondents have been unable to agree upon any reasonable, non-discriminatory, and non-prejudicial adjustment of rates from Indiana and Illinois groups to these destinations; accordingly, the record in these proceedings being adequate for the purpose, it is incumbent upon us to determine, and if need be prescribe, such an adjustment.

13. The difference in the distances from the single important mine in the Boonville group and from nearby mines producing similar coal in the Princeton group to Beloit and the northern Illinois destinations is small. A merger of those two groups will increase the average distance from the Princeton district to the 12 representative northern Illinois destinations as well as to Beloit by only 8 miles. The movement from the Boonville group to this destination territory has been and is negligible, even though its customary differential over Princeton has been only 3 cents. Accordingly, the rates from the Boonville mines to these destinations should not exceed those from the Princeton district to the same destinations.

14. The present and the proposed rates from the western Kentucky group to the northern Illinois destinations and Beloit are made 35 cents over the corresponding rates from the southern Illinois group. In *Commonwealth of Kentucky* v. *Illinois Central R. Co., supra*, we recently prescribed rates from western Kentucky to Chicago and intermediate points, including a number of the northern Illinois destinations embraced in the instant proceeding, which had the [fol. 324] effect of reducing the prior 35-cent differential to those points to 25 cents. The differences in distance, western Kentucky over southern Illinois, to such intermediate points are approximately the same as that to Chicago, but to Illinois points farther north and to points in southern

Wisconsin and eastern Iowa the differences in distance are on the average sufficiently greater to warrant continuance of the present origin differential of 35 cents.

15. In accordance with the findings in *Fairbanks, Morse & Co.* v. *Alton & S. R., supra*, the rates from Indiana, Illinois, and western Kentucky to Beloit should not exceed the resulting rates to Rockford from the same origins by more than 15 cents.

16. The level of the intrastate rates in Illinois herein assailed, on the average, is about 15 percent lower than the interstate rates approved by us as reasonable to representative points in eastern Iowa and about 19 percent lower than the interstate rates approved by us as reasonable to representative points in southern Wisconsin. Such differences between the levels of the intrastate rates on the one hand, and the reasonable interstate rates to southern Wisconsin and eastern Iowa, on the other, are greater than warranted by the differences in the respective transportation conditions under which the intrastate and the interstate traffic moves at the rates referred to.

17. Respondents' loss in revenue as a direct result of the relatively low level of the intrastate rates assailed is not less than $55,000 per annum, and as an indirect result thereof by reason of the relatively low level of the interstate rates from Indiana to the same northern Illinois destinations, which are held down by the intrastate rates referred to, respondents are suffering an additional loss of revenue of not less than $50,000 per annum. Under the rate adjustment herein approved as reasonable and otherwise lawful from Illinois and Indiana to these northern Illinois destinations, respondents' annual revenues may reasonably be expected to be increased by at least the foregoing amounts.

18. The intrastate rates assailed are abnormally low, and traffic moving thereunder fails to produce its fair share of the earnings required to yield revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service, and thereby accomplish the purpose of the act, as set forth in the national transportation policy of the Congress, to develop and preserve a national transportation system adequate to meet the needs of the commerce of the United States, of the postal service, and of the na-

tional defense. *United States* v. *Louisiana*, 290 U. S. 70; *Florida* v. *United States*, 292 U. S. 1; *Illinois Commerce Comm.* v. *United States*, 292 U. S. 474; *State of North Carolina* v. *United States*, — U. S. — (decided June 11, 1945). The burden thus cast upon interstate commerce is undue in and to the extent that these intrastate rates are less than they would be on the bases herein approved.

19. The approved rates or rate bases outlined in appendices A and D hereto, and elsewhere in this report, will remove the numerous inconsistencies in the present and the proposed rate structures, will bring about a relationship between the rates to northern Illinois on the one hand, and to southern Wisconsin and eastern Iowa on the other, which [fol. 325] will reflect as nearly as may be the differences in the transportation conditions in and to those respective territories, and result in a reasonable, non-discriminatory, and non-prejudicial adjustment both on interstate traffic and as between such traffic on the one hand, and Illinois intrastate traffic on the other.

20. The stabilization considerations urged by the Price Administrator are outweighed by the desirability in the public interest of establishing a fair, reasonable, and stable rate adjustment such as is approved in this report.

Conclusions

Based upon the record and the foregoing major fact findings, we conclude that—

1. The present and the proposed rates from Indiana to the northern Illinois destinations, as published in the tariffs enumerated in appendix E to this report, result or would result in unjust discrimination as between shippers and receivers of coal transported in whole or in part by the Milwaukee or the Illinois Central railroads, in violation of section 2 of the act, and in undue preference and prejudice as between the origins in the Brazil and Linton districts, and as between the respective Indiana districts, in violation of section 3(1) of the act, in and to the extent that such rates reflect or would reflect rate relations between such districts and between the points in each of those districts to the respective destinations which differ from the relations reflected by the rates and the rate bases set forth as approved in this report, including appendices A and D hereto.

2. The proposed rates from the Brazil, Linton, and Princeton districts in Indiana to Beloit, as published in tariffs

named in appendix E, would result in unjust discrimination as between shippers and receivers of coal transported in whole or in part by the Milwaukee, in violation of section 2 of the act, and in undue preference and prejudice as between (a) the origins in the respective Brazil and Linton districts (b) the respective Indiana districts, and (c) the Indiana districts on the one hand, and the Illinois districts on the other, in violation of section 3(1) of the act, in and to the extent that such rates would reflect rate relations between such districts and the respective points in each of such districts to Beloit, which differ from the relations reflected by the rates set forth as approved in appendices A and D to this report.

3. The proposed rates from the Indiana districts to the northern Illinois destinations and to Beloit would be unreasonable to the extent that they would exceed the rates or rate bases set forth in the column headed "Rate approved in this proceeding" in appendix A to this report.

4. The present and the proposed rates, as published in tariffs named in appendix E, from the western Kentucky group to northern Illinois destinations intermediate to Chi-[Vol. 326] cago on routes over which the said western Kentucky rates apply or would apply, result and would result in undue prejudice to shippers in the western Kentucky group and in undue preference of shippers in the Illinois and Indiana groups, in violation of section 3(1) of the act, in and to the extent that the western Kentucky rates exceed or might exceed by more than 25 cents the contemporaneous rates from the southern Illinois group to the same destinations.

5. The maintenance of intrastate rates on bituminous coal, in carloads, from Victoria and Rushville, Ill., and from the Fulton-Peoria and Danville groups and other Illinois groups south thereof to northern Illinois destinations to which intrastate rates from the foregoing points or groups are proposed to be increased in schedules enumerated in appendix E hereto, to the extent that such rates are lower than on the approved bases therefor set forth in this report, including appendices A and D hereto, causes and will cause undue, unreasonable, and unjust discrimination against interstate commerce; and this unlawfulness should be removed by increasing the aforesaid intrastate rates to the approved bases for such rates as indicated in this report, including appendices A and D hereto; provided, that this

conclusion shall not be construed as affecting any intrastate rates which are not now lower than on the basis of the Indiana-Illinois scale as set out in appendix C hereto, applied to the shortest tariff-route distances, from Victoria, Rushville, or any of the affected origin groups.

6. Rates in accordance with the foregoing findings and conclusions shall be made effective, so far as practicable, from all origins to all destinations at one and the same time, and will result in a reasonable, non-discriminatory, and non-prejudicial adjustment from Indiana, Illinois, and western Kentucky to all points in the destination territory.

The foregoing findings and conclusions are without prejudice to the right of the authorities of the State of Illinois, or of any other interested party, to apply for a modification thereof as to any specific intrastate rate on the ground that it is not related to interstate rates in such a way as to contravene the provisions of the Interstate Commerce Act.

The suspended schedules of proposed interstate rates will be required to be canceled, without prejudice to the establishment of rates from Indiana and western Kentucky on the bases herein approved. An appropriate order requiring removal of the unlawfulness under sections 2 and 3 of the act found to exist in the interstate rates from Indiana and western Kentucky will be entered. In accordance with our practice in section 13 proceedings, we shall leave to respondents and the Illinois Commission the matter of adjusting the intrastate rates to conform to our findings and conclusions herein under that section. If this is not accomplished within 60 days from the service of this report, consideration will be given to the entry of an appropriate section 13 order.

Commissioner Lee, being necessarily absent, did not participate in the disposition of this proceeding.

I. & S. Docket No. 5139

APPENDIX A

Rates and shortest tariff-route distances from Indiana and Illinois groups to Beloit, Wis., and representative northern Illinois destinations

From groups / To	Amboy, Ill.					Belvidere, Ill.					Byron, Ill.					De Kalb, Ill.				
	Group distance	Present rate	Proposed rate	Rate approved in I.&S. 4368[1]	Rate approved in this proceeding	Group distance	Present rate	Proposed rate	Rate approved in I.&S. 4368[1]	Rate approved in this proceeding	Group distance	Present rate	Proposed rate	Rate approved in I.&S. 4368[1]	Rate approved in this proceeding	Group distance	Present rate	Proposed rate	Rate approved in I.&S. 4368[1]	Rate approved in this proceeding
	Miles	Cents	Cents	Cents	Cents	Miles	Cents	Cents	Cents	Cents	Miles	Cents	Cents	Cents	Cents	Miles	Cents	Cents	Cents	Cents
Arthill	246	184	189	185	189	258	197	212	-	207	248	190	200	190	195	213	184	189	175	184
												[2]180	[2]190	190	195		[2]180	[2]185	175	184
												[3]197	[3]207	190	195					
Anton	288	[4]194	[4]199	195	199	297	202	217	-	217	289	195	205	200	205	257	189	194	185	194
		[4]190	[4]195	195	199							[2]190	[2]200	200	205		[2]185	[2]190	185	194
												[3]202	[3]212	200	205					
Princeton	340	201	206	202	206	364	209	224	-	224	366	202	212	207	212	329	196	201	192	201
							[5]214	229	-	224		[6]209	219	210	212					
Rochville	353	204	209	205	206	399	212	227	-	224	413	205	215	-	212	379	199	204	195	201
Canton-Peoria	140	150	155	-	155	243	150	165	-	165	151	164	165	-	165	166	150	155	-	155
Springfield	186	170	175	-	175	279	180	195	-	195	235	180	190	-	190	210	170	175	-	175
Danville	171	180	189	-	180	262	180	195	-	195	210	180	190	-	190	176	180	185	-	180
Centralia	226	190	195	-	195	351	200	215	-	215	262	200	210	-	210	274	190	195	-	195
Belleville	296	190	195	-	195	395	200	215	-	215	359	200	210	-	210	314	190	195	-	195
Du Quoin	266	200	205	-	200	363	205	220	-	215	302	205	215	-	210	294	200	205	-	195
																	[7]190	195	-	195
Southern Illinois	413	200	205	-	205	428	210	225	-	225	363	210	220	-	220	338	200	205	-	205

327

I. & S. Docket No. 5139
Appendix A - Sheet 2.

328

From groups	To Dixon, Ill.					To Forreston, Ill.					To Freeport, Ill.					To Geneva, Ill.				
	Group distance	Present rate	Proposed rate	Rate approved in I.&S. 4368[1]	Rate approved in this proceeding	Group distance	Present rate	Proposed rate	Rate approved in I.&S. 4368[1]	Rate approved in this proceeding	Group distance	Present rate	Proposed rate	Rate approved in I.&S. 4368[1]	Rate approved in this proceeding	Group distance	Present rate	Proposed rate	Rate approved in I.&S. 4368[1]	Rate approved in this proceeding
	Miles	Cents	Cents	Cents	Cents	Miles	Cents	Cents	Cents	Cents	Miles	Cents	Cents	Cents	Cents	Miles	Cents	Cents	Cents	Cents
Brazil	257	184	189	185	189	266	190	200	190	195	287	197	212	195	207	217	184	189	175	184
							[2]130	190	190	195		[2]180	195	195	207					
							[3]197	207	190	195										
Linton	301	[4]194	199	195	199	305	195	205	200	205	323	202	217	205	217	249	189	194	185	194
		[4]189	194	195	199		[2,4]190	200	200	205		[2,4]190	205	205	217					
							[3]202	212	200	205										
Princeton	350	[5]201	206	202	206	376	202	212	207	212	339	209	224	212	224	313	196	201	192	201
		[5]214	206	202	206		[9]209	219	207	212		[5]214	229	212	224					
Boonville	361	204	209	205	206	430	205	215	210	212	400	212	227	215	224	356	199	204	195	201
Fulton-Peoria	124	150	155	-	155	160	150	160	-	160	175	150	165	-	165	189	[10]165	170	-	160
																	[10]150	155	-	160
Springfield	177	[11]170	175	-	175	230	180	190	-	190	275	180	195	-	195	230	170	175	-	175
		[11]180	175	-	175												[11]180	175	-	175
Danville	221	[12]180	185	-	185	228	180	190	-	190	227	180	195	-	195	166	180	185	-	180
		[12]184	189	-	185															
Centralia	255	190	195	-	195	261	200	210	-	210	331	200	215	-	215	293	190	195	-	195
Belleville	292	190	195		195	328	200	210	-	210	342	200	215	-	215	353	[13]190	195	-	195
																	[13]204	209	-	195
Du Quoin	278	200	205	-	200	301	[7]205	215	-	210	313	[7]205	220	-	215	318	200	205	-	200
							[7]200	210	-	210		[7]200	215	-	215					
Southern Illinois	312	200	205	-	205	349	210	220	-	220	367	210	225	-	225	382	200	205	-	205

I. & S. Docket No. 5139
Appendix A - Sheet 3.

From groups \ To	Polo, Ill.					Rochelle, Ill					Sterling, Ill.				
	Group distance	Present rate	Proposed rate	Rate approved in I & S. 4368[1]	Rate approved in this proceeding	Group distance	Present rate	Proposed rate	Rate approved in I. & S. 4368[1]	Rate approved in this proceeding	Group distance	Present rate	Proposed rate	Rate approved in I.& S. 4368[1]	Rate approved in this proceeding
	Miles	Cents	Cents	Cents	Cents	Miles	Cents	Cents	Cents	Cents	Miles	Cents	Cents	Cents	Cents
Brazil	265	197	207	190	202	255	184	189	180	189	287	184	189	185	189
Linton	306	202	212	200	212	289	194	199	190	199	310	194	199	195	199
		[4]190	200	200	212		[4]189	194	190	199					
Princeton	333	209	219	207	219	352	201	206	197	206	371	201	206	202	206
							[5]214	219	197	206		[5]214	206	202	206
Boonville	378	217	222	210	219	396	204	212	200	206	430	204	209	205	206
Fulton-Peoria	144	164	160	-	160	126	150	155	-	155	122	133	133	-	133
		[7]150	160	-	160							[15]175	172	-	133
												[16]125	130	-	133
Springfield	217	180	190	-	190	200	170	175	-	175	184	170	175	-	175
							[17]180	175	-	175		[17]180	175	-	175
Danville	226	197	207	-	207	206	180	185	-	185	225	180	185	-	185
Centralia	252	200	210	-	210	263	190	195	-	195	262	190	195	-	195
Belleville	320	200	210	-	210	302	190	195	-	195	287	190	195	-	195
												[13]210	215	-	195
Du Quoin	291	205	215	-	210	278	200	205	-	200	292	200	205	-	200
		[7]200	210	-	210										
Southern Illinois	349	210	220	-	220	355	200	205	-	205	329	200	205	-	205

I. & S. Docket No. 5139
Appendix A - Sheet 4

From groups \ To	Rockford, Ill.					Beloit, Wis.				
	Group distance	Present rate	Proposed rate	Rate approved in I. & S. 4368[1]	Rate approved in this proceeding	Group distance	Present rate	Proposed rate	Rate approved in I. & S. 4368[1]	Rate approved in this proceeding
	Miles	Cents	Cents	Cents	Cents	Miles	Cents	Cents	Cents	Cents
Brazil	251	197	212	195	207	269	210	227	225	222
		[2]180	195	195	207		[2]210	[2]210	225	222
Linton	300	202	217	205	217	302	[2]220	232	235	232
		[2,4]190	205	205	217		[2]220	[2]220	235	232
Princeton	375	209	224	212	224	379	227	239	242	239
		[5]214	229	212	224		[14]227	[14]227	242	239
Boonville	409	212	227	215	224	415	230	-	245	239
Northern Illinois	-	-		-	-	122	140	-	150	-
Fulton-Peoria	154	150	165	-	165	170	130	-	190	-
Springfield	257	180	195	-	195	276	210	-	225	-
Danville	208	180	195	-	195	223	210	-	225	-
Centralia	316	200	215	-	215	283	230	-	245	-
Belleville	332	200	215	-	215	358	230	-	245	-
Du Quoin	304	205	220	-	215	322	235	-	250	-
		[7]200	215	-	215					
Southern Illinois	363	210	225	-	225	394	240	-	255	-

1 Coal to Illinois and Wisconsin, 232 I.C.C. 151, including the authorized general increases of November 15, 1937.
2 From origins on the Chicago, Milwaukee, St. Paul & Pacific Railroad; no change proposed in rates to Beloit.
3 From origins on the New York Central and Pennsylvania railroads.
4 From origins on the Illinois Central Railroad.
5 From origins on the Baltimore & Ohio Railroad.
6 From origins on the Algers, Winslow & Western, Baltimore & Ohio, and New York Central railroads.
7 From two origins on the Illinois Central Railroad.
8 From origins on the Pennsylvania Railroad.
9 From origins on the Algers, Winslow & Western Railroad.
10 From origins on the Chicago & North Western and Minneapolis & St. Louis railroads.
11 From two origins on the Wabash Railroad.
12 From origins on the Chicago & Eastern Illinois Railroad.
13 From origins on the Illinois Terminal Railroad.
14 From origins on the Southern and Algers, Winslow & Western railroads; no change proposed in rates to Beloit.
15 From origins on the Toledo, Peoria & Western Railroad.
16 From one origin on the Chicago & North Western Railway.
17 From five origins on the Wabash Railroad.

I. & S. Docket No. 5139

APPENDIX B

Comparison between representative present and proposed rates to northern Illinois and Beloit, Wis., and rates to nearby points in Wisconsin and Iowa

From / To	Springfield group			Southern Illinois group			Brazil group			Linton group			Princeton group			Boonville group		
	Short-est tariff-route distance	Rate		Short-est tariff-route distance	Rate		Short-est tariff-route distance	Rate		Short-est tariff-route distance	Rate		Short-est tariff-route distance	Rate		Short-est tariff-route distance	Rate	
		Present	Proposed		Present	Proposed		Present	Proposed		Present	Proposed		Present	Proposed		Present	Proposed
	Miles	Cents	Cents	Miles	Cents	Cents	Miles	Cents	Cents	Miles	Cents	Cents	Miles	Cents	Cents	Miles	Cents	Cents
Dixon, Ill.	177	170	175	312	200	205	257	184	189	301	[3]194	199	350	201	206	361	204	209
Rochelle, Ill.	200	170	175	355	200	205	255	184	189	289	[3]194	199	352	201	206	396	204	209
Rockford, Ill.	257	180	195	363	210	225	251	[4]197	212	300	[5]202	217	375	209	224	409	212	227
Freeport, Ill.	275	180	195	367	210	225	287	[4]197	212	323	[5]202	217	389	209	224	400	212	227
Beloit, Wis.	276	210	-	394	240	-	269	210	227	302	220	232	379	227	239	415	230	-
Chicago, Ill.	228	175	-	328	205	-	183	165	-	230	175	-	283	187	-	324	190	-
Burlington, Wis.	282	260	-	412	290	-	254	255	-	291	265	-	355	272	-	394	275	-
Janesville, Wis.	284	[1]249	-	408	[1]279	-	272	249	-	307	259	-	379	266	-	415	269	-
Fort Atkinson, Wis.	327	[1]253	-	455	[1]283	-	299	253	-	330	263	-	401	270	-	435	273	-
Madison, Wis.	314	260	-	421	290	-	311	260	-	336	270	-	414	277	-	454	280	-
Lake Mills, Wis.	344	[1]263	-	476	[1]293	-	314	263	-	354	273	-	416	280	-	450	283	-
Davenport, Iowa	199	[2]185	-	338	[2]225	-	290	215	-	332	225	-	384	232	-	389	235	-
Clinton, Iowa	213	[2]185	-	354	[2]225	-	312	215	-	332	225	-	407	232	-	424	259	-
Dubuque, Iowa	285	[2]254	-	375	[2]289	-	342	259	-	375	269	-	437	276	-	463	279	-
Mount Pleasant, Iowa	223	[2]194	-	335	[2]229	-												
Tipton, Iowa	239	[2]215	-	373	[2]250	-												
Wheatland, Iowa	246	[2]228	-	375	[2]263	-												
Maquoketa, Iowa	252	[2]241	-	388	[2]276	-												
Washington, Iowa	253	[2]215	-	361	[2]250	-												

[1] Approved in Fairbanks-Morse & Co. v. Alton & S. R., 251 I.C.C, 181.
[2] Approved in Midland Electric Coal Corp. v. Chicago & N. W. Ry. Co., 232 I.C.C. 5, plus 1937 general increases.
[3] From Illinois Central mines, 5 cents lower.
[4] From Chicago, Milwaukee, St. Paul & Pacific mines, 17 cents lower.
[5] From Illinois Central and Chicago, Milwaukee, St. Paul & Pacific mines, 12 cents lower.

APPENDIX C

Distance scales of rates on coal used in this report

(Rates in cents per ton of 2,000 pounds)

Distance	Column 1 rate	Distance	Column 2 rate
Miles	Cents	Miles	Cents
50 miles and over 40	97	50 miles and over 40	104
60 miles and over 50	105	60 miles and over 50	113
70 miles and over 60	113	70 miles and over 60	122
80 miles and over 70	121	80 miles and over 70	131
90 miles and over 80	129	90 miles and over 80	139
100 miles and over 90	137	100 miles and over 90	147
110 miles and over 100	143	110 miles and over 100	154
120 miles and over 110	149	120 miles and over 110	161
130 miles and over 120	155	130 miles and over 120	168
140 miles and over 130	160	140 miles and over 130	175
160 miles and over 140	170	160 miles and over 140	188
180 miles and over 160	180	180 miles and over 160	202
200 miles and over 180	190	200 miles and over 180	215
225 miles and over 200	200	220 miles and over 200	389
250 miles and over 225	210	240 miles and over 220	242
275 miles and over 250	220	260 miles and over 240	255
300 miles and over 275	230	280 miles and over 260	267
		300 miles and over 280	279
325 miles and over 300	238	325 miles and over 300	290
350 miles and over 325	246	350 miles and over 325	301
375 miles and over 350	254	375 miles and over 350	312
400 miles and over 375	262	400 miles and over 375	323
425 miles and over 400	270	425 miles and over 400	334
450 miles and over 425	278	450 miles and over 425	345
475 miles and over 450	286	475 miles and over 450	356
500 miles and over 475	294	500 miles and over 475	367

Column 1. The Indiana-Illinois scale, prescribed in Coal Trade Asso. of Ind. v. Baltimore & O. R. Co., 190 I.C.C. 743; modified so as to absorb the 1937 general increases.

Column 2. The Midland scale, prescribed in Midland Electric Coal Corp. v. Chicago & N. W. Ry. Co., 232 I.C.C. 5, modified so as to absorb the 1937 general increases.

619

APPENDIX D

Average distances and rates, in cents per ton of 2,000 pounds, from Illinois and Indiana groups

From group	Shortest tariff-route distance	Average present rate	Average proposed rate	Average of rates herein approved	Relation of approved rate to rate under - Indiana-Illinois scale	Relation of approved rate to rate under - Midland scale
	Miles	Cents	Cents	Cents	Percent	Percent
To 12 representative destinations in northern Illinois:						
Fulton-Peoria	159	152	159	159	93.5	84.6
Springfield	225	175	183	183	91.5	75.6
Danville	214	183	190	188	94.0	82.1
Centralia	283	195	203	203	88.3	72.8
Belleville	327	195	205	205	83.3	68.1
Du Quoin	300	202	210	206	89.6	73.8
Southern Illinois	354	205	214	214	84.3	68.6
Brazil	256	189	198	195	88.6	76.5
Linton	293	194	203	205	89.1	73.5
Princeton	358	204	213	212	83.5	67.9
Boonville	392	205	215	212	80.9	65.6
Princeton-Boonville	366	204	213	212	83.5	67.9
To Beloit:						
Northern Illinois	122	140	-	140	90.3	83.3
Fulton-Peoria	170	180	-	180	100.0	89.1
Springfield	276	210	-	210	91.3	78.7
Danville	223	210	-	210	105.0	86.8
Centralia	283	230	-	230	100.0	82.4
Belleville	358	230	-	230	90.6	73.7
Du Quoin	322	235	-	235	98.7	81.0
Southern Illinois	394	240	-	240	91.6	74.3
Brazil	269	210	225	222	100.9	83.1
Linton	302	220	228	232	97.5	80.0
Princeton	379	227	235	239	91.2	74.0
Boonville	415	230	230	239	88.5	71.6
Princeton-Boonville	387	228	237	239	91.2	74.0

APPENDIX E

Reference to tariffs containing suspended rates

Railroad	I.C.C. Number	Ill.C.C. Number
The Alton Railroad Company	243	147
The Atchison, Topeka & Santa Fe Railway Company	13094	622
The Baltimore and Ohio Railroad Company	WL-10709 WL-10705	WL-984
Chicago and Eastern Illinois Railway Company (Charles M. Thomson, Trustee)	2	2
Chicago & Illinois Midland Railway Company	B-292	B-221
Chicago and North Western Railway Company	10934 MF-46	867
Chicago, Burlington & Quincy Railroad Company	19670	2064
Chicago, Indianapolis & Louisville Railway Company (L. F. De Ramus and Holman D. Pettibone, Trustees)	4724	-
Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings, and George I. Haight, Trustees)	(B-7246 (B-7238 (B-7287	593 608
The Chicago, Rock Island and Pacific Railway Company (Frank O. Lowden and Joseph B. Fleming, Trustees)	C-13020	782
Gulf, Mobile and Ohio Railroad Company	17	3
Illinois Central Railroad Company	E-1802	E-316
Illinois Terminal Railroad Company	69	62
Litchfield and Madison Railway Company	386	296
Louisville and Nashville Railroad Company	A-16428	114
The Minneapolis & St. Louis Railroad Company (L. C. Sprague, Receiver)		303

The Minneapolis & St. Louis Railroad Company (L. C. Sprague, Receiver)		303
Missouri Pacific Railroad Company (Guy A. Thompson, Trustee)	A-9487	397
The New York Central Railroad Company	182-164	22-28
The Pennsylvania Railroad Company	2387	146
Southern Railway Company	C-2230	C-278
Wabash Railway Company (Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers)	7276	1081

221

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 9th day of July, A. D. 1945

Investigation and Suspension Docket No. 5139

Coal to Beloit, Wis., and Northern Illinois

It appearing, That by order dated July 30, 1942, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order and suspended the operation of all of said schedules until March 2, 1943, and that subsequently respondents have voluntarily postponed the effective date of all of said schedules pending the disposition of this proceeding;

It further appearing, That a full investigation of the matters and things involved has been made; that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof; and that in said report the Commission has found (1) that the said suspended schedules have not been justified because certain of the proposed rates on bituminous coal from Indiana and western Kentucky rate groups to points in northern Illinois and to Beloit, Wis., would be unreasonable, unjustly discriminatory, or unduly prejudicial or preferential, as indicated in said report; and (2) that certain of the present rates on bituminous coal from Indiana and western Kentucky rate groups to points in northern Illinois are unjustly discriminatory and unduly prejudicial and preferential in and to the extent indicated in said report;

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel the proposed schedules in this docket on or before November 16, 1945, upon notice to this Commission and to the general public by not less than one day's filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, without prejudice to the establishment of rates on the bases approved in the said report.

It is further ordered, That the said respondents, according as they participate in the transportation, be, and they are hereby, notified and required, on or before November 16, 1945, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, (1) to cease and desist from practicing the unjust discrimination under section 2 of the Interstate Commerce Act and the undue prejudice and preference under section 3(1) of said act, found in said report to exist, and (2) to publish, maintain, and apply rates and charges which will avoid and remove the said unjust discrimination and undue prejudice and preference

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission.

(SEAL) W. P. BARTEL,

Secretary.

222

[fol. 337] At the General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 5th day of October, A. D., 1945

Investigation and Suspension Docket No. 5139

Coal to Beloit, Wis., and Northern Illinois

ORDER—October 5, 1945

Upon further consideration of the record in the above-entitled proceeding, and upon consideration of petition of respondent Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight Trustees), and petitions of protestants Coal Trade Association of Indiana, and Rockford, Freeport, and Belvidere Chambers of Commerce, in so far as said petitions pray for postponement of effective date of order:

It is ordered, That the order entered herein on July 9, 1945, which by its present terms is to become effective November 16, 1945, upon notice, as therein specified, be and it is hereby, modified so that it will become effective on December 20, 1945, in lieu of November 16, 1945, upon like notice.

By the Commission.

W. P. Bartel, Secretary. (Seal.)

[fol. 338] At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 13th day of November, A. D., 1945.

Investigation and Suspension Docket No. 5139

Coal to Beloit, Wis., and Northern Illinois

No. 28881

Bituminous Coal Rates Within Illinois

ORDER—November 13, 1945

Upon further consideration of the record in the above-entitled proceedings, and of petition of Coal Trade Association of Indiana for reopening, rehearing, reargument and

reconsideration, and petitions of Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees), and Rockford Chamber of Commerce, Freeport Chamber of Commerce and Belvidere Chamber of Commerce, for reopening, rehearing and reconsideration, and of replies thereto;

It is ordered, That the said petitions be, and they are hereby denied.

It is further ordered, That the order entered in Investigation and Suspension Docket No. 5139, on July 9, 1945, to become effective November 16, 1945, upon notice as therein specified, and since modified to become effective December 20, 1945, upon same notice, be, and it is hereby, further modified so that it will become effective January 21, 1946, in lieu of December 20, 1945, upon like notice.

By the Commission.

W. P. Bartel, Secretary. (Seal.)

[fol. 339] INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 5139

Coal to Beloit, Wis., and Northern Illinois

No. 28881

Bituminous Coal Rates Within Illinois

In the Matter of Letter Request on Behalf of Coal Trade Association of Indiana, for Further Postponement of Effective Date of Order:

Present: Carroll Miller, Commissioner, to whom the above entitled matter has been assigned for action thereon.

ORDER—December 6, 1945

Upon further consideration of the record in the above-entitled proceedings, and of letter request on behalf of the Coal Trade Association of Indiana, protestant, for further postponement of the effective date of the order in Investigation and Suspension Docket No. 5139, and good cause appearing therefor:

It is ordered, That the order entered in Investigation and Suspension Docket No. 5139, on July 9, 1945, to become effec-

tive November 16, 1945, upon notice as therein specified, since modified to become effective January 21, 1946, upon same notice, be and it is hereby, further modified so that it will become effective February 8, 1946, in lieu of January 21, 1946, upon like notice.

It is further ordered, That the order entered in No. 28881, on November 13, 1945, to become effective on January 21, 1946, upon 30 days' notice, be, and it is hereby modified so that it will become effective February 8, 1946, in lieu of January 21, 1946, upon 30 days' notice.

Dated at Washington, D. C. this 6th day of December, 1945.

By the Commission, Commissioner Miller.

W. P. Bartel, Secretary. (Seal.)

[fol. 1] PETITIONER'S EXHIBIT NO. 4

Before The Interstate Commerce Commission

No. 28881

BITUMINOUS COAL RATES WITHIN ILLINOIS

I. & S. No. 5139

COAL TO BELOIT, WISCONSIN AND NORTHERN ILLINOIS

Illinois Commerce Commission, Docket No. 30935

THE ALTON RAILROAD COMPANY, ET AL. In the matter of the proposed changes in rates on bituminous coal between points in the State of Illinois

Illinois Commerce Commission, Docket No. 31295

DIXON CHAMBER OF COMMERCE, MEDUSA PORTLAND CEMENT COMPANY, Reynolds Wire Company,

vs.

CHICAGO AND NORTHWESTERN RAILWAY COMPANY, et al.

Morrison Hotel,
Chicago, Illinois,
March 18, 1943.

Met, pursuant to notice.

Before R. N. Trezise, Examiner, Interstate Commerce [fol. 2] Commission. F. B. McElroy, Illinois Commerce Commission.

PRESENT:

B. M. Hamilton and Erle J. Zoll, Jr., 135 East 11th Place, Chicago, Illinois, appearing for Illinois Central Railroad Company.

Edward A. Kaier, 652 Union Station, Chicago, Illinois, appearing for The Pennsylvania Railroad Company.

T. O. Jennings and J. A. Christiansen, 700 LaSalle Street Station, Chicago, Illinois, appearing for Chicago, Rock Island & Pacific Railway.

Hewitt Biaett, 547 West Jackson Boulevard, Chicago, Illinois, appearing for respondents generally and Chicago, Burlington & Quincy Railroad Company.

C. J. Nelson, 547 West Jackson Boulevard, Chicago, Illinois, appearing for Chicago, Burlington & Quincy Railroad Company.

C. W. Dilli and A. J. Dixon, McPherson Square, 15th and K Streets, North West, Washington, D. C., appearing for Southern Railway Company.

T. N. Cook, 332 South Michigan Avenue, Chicago, Illinois, and

H. H. Washer, 332 South Michigan Avenue, Chicago, Illinois, appearing for C. & E. I. Railroad Company.

B. F. Rice, 1462 Railway Exchange Building, St. Louis, Missouri, appearing for Wabash Railroad.

[fol. 3] C. J. Bindner and L. A. Sackbauer, 1710 Missouri Pacific Building, St. Louis, Missouri, appearing for Missouri Pacific Railroad.

J. E. Flansburg, 400 West Madison Street, Chicago, Illinois, appearing for Chicago and North Western Railway Company (Charles M. Thomson, Trustee).

William L. Hunter and Walter H. Kuhis, Union Station Building, Chicago, Illinois, appearing for Chicago, Milwaukee, St. Paul & Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees).

Leo P. Day, 525 LaSalle Station, Chicago, Illinois, appearing for New York Central System.

W. J. Robertson, 228 Union Station, Chicago, Illinois, appearing for Illinois-Indiana Coal & Coke Committee.

R. C. Raasch, Room 236, 516 West Jackson Boulevard, Chicago, Illinois, appearing for Illinois Freight Association.

George W. Cole, 1000 Midland Building, Cleveland, Ohio, appearing for Medusa Portland Cement Company, Reynolds Wire Company, and Dixon Chamber of Commerce.

C. B. Cardy, 1370 W. 70th Street, Chicago, Illinois, appearing for Medusa Portland Cement Company, Reynolds Wire Company, Northern Illinois Coal Corporation, and Dixon Chamber of Commerce.

R. F. Wood, and H. F. Chalet, 603 Victoria Building, St. Louis, Missouri, appearing for Fifth and Ninth Districts [fol. 4] Coal Traffic Bureau and Belleville Fuels, Inc., 603 Victoria Building, St. Louis, Missouri.

C. P. Hoy, 407 North 8th Street, St. Louis, Missouri, appearing for Fifth and Ninth Districts Coal Traffic Bureau.

Ford D. Porter, 431 South Dearborn Street, Chicago, Illinois, appearing for Sterling Traffic Bureau.

A. S. Boden, 302 Oliver Building, Pittsburgh, Pennsylvania, appearing for Western Pennsylvania Coal Traffic Bureau.

William R. Morgan, Special Assistant Attorney General, and

Stephen Fleming, Assistant Attorney General, 208 South LaSalle Street, Chicago, Illinois, appearing for George F. Barrett, Attorney General of the State of Illinois.

C. W. Bather, Faust Hotel, Rockford, Illinois, appearing for Rockford Chamber of Commerce, Freeport Chamber of Commerce, and Belvidere Chamber of Commerce.

Charles W. Stadell, and Harry A. Roscne, 307 North Michigan Avenue, Chicago, Illinois, appearing for Illinois Coal Traffic Bureau and Central Illinois District Coal Traffic Bureau.

E. B. Wilkinson and J. A. Moran, 231 South La Salle Street, Chicago, Illinois, and

Harold V. Scott, 632 Cherry Street, Terre Haute, Indiana, appearing for Coal Trade Association of Indiana.

A. J. Christiansen, 310 South Michigan Avenue, Room 1708, Chicago, Illinois, and

[fols. 5-6-7] Edward K. Wheeler, 815 15th Street, North West, Washington, D. C., and

Howard W. Vesey, 815 15th Street, North West, Washington, D. C., appearing for Middle States Fuels, Inc., and Northern Illinois Coal Trade Association.

J. E. Marks, 145 East High Street, Lexington, Kentucky, appearing for Kentucky Coal Agency, Incorporated.

Frank L. McCarthy, Security Trust Building, Lexington, Kentucky, appearing for Railroad Commission of Kentucky.

Joseph W. Elliott, 600 South Michigan Avenue, Chicago, Illinois, appearing for Fairbanks, Morse & Company, and Beloit Commercial Club.

William F. Ehmann, 1 West Main Street, Madison, Wisconsin, appearing for Wisconsin Coal Bureau, Inc.

Haskell Donoho, and William H. Edmonds, O. P. A., Washington, D. C., appearing for Director of Economic Stabilization and Price Administrator.

[fol. 8] Proceedings

Exam. Trezise: Come to order, gentlemen. The Interstate Commerce Commission has set for hearing at this time and place Docket No. 28881, Bituminous Coal Rates within

Illinois, and I. & S. 5139, Coal from Beloit, Wisconsin, and Northern Illinois.

Mr. McElroy: The Illinois Commerce Commission has set for hearing at this time and place its Docket 30935, in the matter of proposed changes in rates on bituminous coal, scheduled to become effective on August 2, 1942; and the Illinois Commerce Commission has also set for hearing at this time and place its Docket 31295, Dixon Chamber of Commerce, Medusa Portland Cement Company, Reynolds Wire Company, versus Chicago and North Western Railway Company et al.

Mr. Cardy: Now, Mr. Examiner, in so far as those last two named cases are concerned, I understand they will be tried on one record; in other words, No. 30935, which involves intrastate rates, and 31295, which is a complaint covering the same, substantially the same rates, will be tried on one record.

Mr. McElroy: Those cases will be heard on a common record.

Exam. Trezise: You gentlemen have entered your appearance blanks, I presume. If there are any whose names appear on those blanks who are not present, the Examiners [fol. 9] should be advised at this time.

Mr. Morgan: If the Examiner please, George F. Barrett, Attorney General for the State of Illinois, whose appearance has been entered on the blank by myself as Special Assistant Attorney General, and Stephen Fleming, Assistant Attorney General, will be unable to attend the hearing. However, Mr. Fleming will be at the hearing later.

Exam. Trezise: Is that all, Mr. Morgan?

Mr. Morgan: I believe that clears it up.

Mr. Vesoy: If the Examiner please, my partner, Edward K. Wheeler, is not present at this time. However, he will be here during the course of the hearing. I have entered an appearance for him.

Exam. Trezise: The appearance blanks, I believe, also contain reference to the complaint and answer case in Docket 28888. Inasmuch as the parties have been unable to agree to anything different from what they agreed to on the prehearing conference, the Examiner is constrained to hear the 28888 separately. The number on the appearance blanks 28888 should be stricken and the parties, when we call that number, will be required to enter another appearance.

In No. 28881, which has been announced for hearing, it is an investigation to determine whether the rates and charges of common carriers by railroad on bituminous coal within Illinois from producing points to Rockford, Free- [fols. 10-12] port, Dixon, and other destinations north and west of Chicago, made or imposed by authority of the State of Illinois, cause or will cause any undue or unreasonable advantage, preference or prejudice, as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce, and also to determine what rates and charges, if any, or what maximum or minimum, or minimum and maximum rates and charges shall be prescribed thereafter to be charged by railroads within Illinois, to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist.

The Illinois Commerce Commission and the Governor of Illinois have been advised. In the I. & S. proceeding, 7139, Coal to Beloit, Wisconsin, and Northern Illinois, there is a proposed adjustment in rates on coal in carloads from mines in Illinois, Indiana, and Western Kentucky, to Beloit, Wisconsin, Rockford, Illinois, and certain other points in Northern Illinois. The propriety of those rates are in question.

[fol. 13] Mr. Zoll: Mr. Examiner, as I understand, there are four cases, two Interstate cases and two Illinois Commerce Commission cases. They are all going to be heard on one common record, with the exception of the reparation feature. We will start now and run through and everything that is put in the record during that time will go to each and every one of those four cases. Isn't that all there is to it?

Exam. Trezise: Well, I think that is a pretty fair statement, Mr. Zoll, except there might be some little exception there about this reparation which is going to be deferred until some later date. Now, gentlemen, if there are no preliminary remarks other than have already been made, we will now listen to Mr. Hunter.

Mr. Vesey: I have one inquiry I would like to make, just for the purpose of getting it cleared up, and I am a neophyte in these proceedings, so I hope you will bear with me. As I understood your statement in the beginning, the rates

involved in the 13th Section Case, No. 28881, are rates which [fol. 14] have been either prescribed or imposed by the Illinois Commerce Commission, and the question here is the justness and reasonableness of those rates, as stated by you, and that those are the only rates that are in issue in that proceeding. Am I correct in that understanding?

Exam. Trezise: I am not so sure that the Examiner understands what you have in mind. The issue was the issue that the Examiner read, and you understood it to be the rates imposed by authority of the State of Illinois. That is what the Examiner read. He didn't read anything else about that.

Mr. Vesey: I just wanted to be certain I was correct in that understanding. That is what I thought you said, and as I put it in my own language, that means to me simply the rates in issue, as far as the Interstate Commerce Commission is concerned, are the rates either imposed or prescribed by the Illinois Commerce Commission.

Exam. Trezise: Yes. The Interstate Commerce Commission at this time chose to write the order in conformance to the statute, in the words of the statute. They couldn't do anything else very well and have a sound foundation.

Mr. Hunter: Mr. Examiner, in your statement of the case you indicated that the carriers had given notice to the Illinois Commerce Commission and to the Governor of the State of Illinois, or that the Interstate Commerce Commission had given notice. I wondered if the record might show also that [fols. 15-17] the carriers had given notice as required by law to the Office of Price Administration.

Exam. Trezise: I think that is a very good suggestion, Mr. Hunter, and the record will so show, if that is a fact, and it is, Mr. Hunter?

Mr. Hunter: It is.

Mr. Donoho: On behalf of the Office of Price Administration, that statement is correct.

Exam. Trezise: All right, Mr. Donoho. Now, may we proceed?

[fol. 18] Exam. Trezise: Very well, gentlemen. If there are no further preliminary remarks, may we have the first witness.

Mr. Zoll: Mr. Robertson.

W. J. ROBERTSON was sworn and testified as follows:

Direct examination.

[fol. 19] By Mr. Zoll:

Q. Will you please state your name to the reporter.
A. W. J. Robertson.
Q. Your address?
A. 228 Union Station, Chicago.
Q. What do you do?
A. I am Commerce and Coal Agent of the Illinois Freight Association.
Q. Could you describe briefly the nature of your duties?
A. I prepare coal dockets, conduct rate hearings, and any other assignments having to do with Illinois-Indiana Coal & Coke Committee.
Q. Have you been doing that work very long?
A. Since 1922.
Q. Will you please proceed to identify your exhibits.
A. The representatives of the various railroads parties to these proceedings have under my personal supervision prepared six exhibits for introduction in evidence at this hearing. In accordance with the order of the Interstate Commerce Commission dated December 1, 1942, these exhibits were on March 4, 1943, sent by first class mail to the parties who attended the prehearing conference held before Examiner Trezise on November 24 and 25, 1942. I am prepared to stand cross examination on the correctness of the data shown on these exhibits, but cross examination as to [fol. 20] the reasons why the factual data is what it is as well as with respect to the conclusions that may be drawn from that data should be directed to the individual railroad witnesses who will follow me on the stand.

My Exhibit No. 1 is a map upon which are outlined the coal mining origin groups in Illinois, Indiana, and western Kentucky.

(Respondent's Exhibit No. 1, Witness Robertson, marked for identification, and received in evidence.)

Exam. Trezise: Gentlemen, it will be understood that when the exhibit is identified and described, it will be shown as received in evidence on the record, unless it is later rejected for some good reason.

Mr. McElroy: Miss Reporter, let the record show that the ruling of the Examiner of the Interstate Commerce Commission will also be the ruling of the Illinois Commerce Commission, unless otherwise shown on the record, both with respect to the admission of evidence and the receipt of evidence.

Mr. Morgan: As I understand the ruling of the Examiners, all parties may raise their objections at any time, during the development of cross examination or otherwise.

Exam. Trezise: Yes, Mr. Morgan. There is no objection to your objecting any time, if you have good ground for it.

Mr. Morgan: Well, I am assuming that that is a part of it, and it is received in evidence subject to the development [fol. 21] of objection at any time during the proceeding.

Exam. Trezise: Surely, that is true, Mr. Morgan, for the reason I want to avoid too much talk on the record, so that the reporter merely shows that it is received in evidence, unless it is rejected because of some good reason.

Mr. Morgan: I just wanted to clear up that point.

Exam. Trezise: Yes, sir. Proceed.

The Witness: My Exhibit No. 2 is also a map upon which is outlined the destination territory involved in these proceedings. Within this outline, enclosed in rectangles, are shown the present and suspended rates to twelve representative suspended destinations from the southern Illinois group. The ovals outside the destination territory show fourteen representative comparative points and within each oval is shown the present rate from southern Illinois.

(Respondent's Exhibit No. 2, Witness Robertson, marked and received in evidence.)

Mr. Bather: Just one minute, Mr. Robertson, before you proceed. Do those rates shown in Exhibit 2 reflect the five cent increase permitted in Ex-Parte 148?

The Witness: They do not.

Mr. Bather: So that there would be an additional five cents added to the rates shown in the exhibit?

The Witness: That is correct.

Mr. Zoll: As he will later say.

[fol. 22] The Witness: My testimony will later indicate that.

Mr. Morgan: May I raise one point on Exhibit 2. The witness states that certain areas beyond Illinois were rep-

resentative. I believe that was the exhibit, No. 2, was it not?

The Witness: Comparative, representative comparative points, I stated.

Mr. Morgan: All right. I was wondering if he could explain as he goes along why he feels they are comparative, as I feel that will simplify analysis of the record and cross-examination.

Mr. Zoll: I would rather have it the opposite. I would rather have him get through with this statement, and then any questions about it you can keep in mind and ask. I think that would expedite matters rather than having this constant interrupting.

Exam. Trezise: I think we had better go ahead and let the witness put in his direct testimony, and when it comes to whether or not the point is representative, and he says it is, we can find that out afterwards, Mr. Morgan. I think that would be a more orderly procedure.

Mr. Zoll: Proceed, Mr. Robertson.

The Witness: My Exhibit No. 3, as is shown on its title page, consists of five sections, and the information in each section is also indicated on the title page:

[fol. 23] I do not believe that the first two sections of Exhibit No. 3 require any particular explanation. However, in answer to several inquiries from parties who have received this exhibit, I should like to explain the formula used in Section 3 of this Exhibit No. 3, which is a statement indicating the number of times each origin point was used more than once in computing distances to each representative suspended and comparative destination. This section, as will be noted, consists of four pages. In the first column to the right of the designation of the origin point is a column which is marked "Railroad Symbol," and opposite each origin point is a symbol number. The explanation of the respective symbols used is at the bottom of page 4. For instance, on line 1 from Pekin, Illinois, there is shown railroad symbol 2, which, by referring to page 4, indicates that that represents the Alton Railroad. Under that is symbol 3, which represents the A. T. & S. F. Railway, and symbol 14, which represents the Illinois Central Railroad. Across the page, under the suspended and comparative destinations, where the origin point was used more than once is an "X", which means that that respective

railroad's distance was used in computing the figures shown in these exhibits.

Exam. Trezise: And when you say it is shown more than once, you are saying that there must be a mine there or something of that kind that is served by more than one [fol. 24] carrier, isn't that the point?

The Witness: That is correct.

Section 4 of Exhibit No. 3, consisting of six pages, shows the average distances via short tariff routes from the northern Illinois mining districts to each of the representative suspended and comparative destinations.

Section 5 of the exhibit, consisting of 75 pages, shows the average distances via short tariff routes from origin coal mining groups and stations in Illinois (except northern Illinois), Indiana and western Kentucky to these same representative suspended and comparative destinations.

It will be noted that the mileage information includes average distances for the Group rates as well as separate rates other than Group rates.

(Respondent's Exhibit No. 3, Witness Robertson, marked and received in evidence.)

Exam. Trezise: And when you say short tariff routes, you mean short tariff routes and you do not mean shortest tariff routes?

The Witness: I mean short tariff routes.

Exam. Trezise: Yes, sir.

Mr. Cardy: Just for the benefit of the record, can you tell us the difference between short and shortest? I don't know what it is. Maybe somebody else does.

The Witness: You wouldn't understand if I told you then.

[fol. 25] Mr. Cardy: For the sake of the record, can you figure it out in just a few words, Mr. Robertson?

The Witness: It is merely the difference between using the mine once or a sufficient number of times to cover all railroads that serve that particular point.

Exam. Trezise: And this second proposition that you named is what you call the short tariff route?

The Witness: Yes, sir.

My Exhibit No. 4 consists of 11 sections and the contents of each section are described on the title page. I do not believe the first six sections of this exhibit require any particular explanation.

Section VII of Exhibit No. 4 is a summary, which was prepared for the convenience of the various parties, of the information in Sections III and IV, with respect to the Southern Illinois Group.

Section VIII of Exhibit No. 4 is a statement of the tonnage of bituminous coal and the revenue derived therefrom for the year 1941 and the first six months of 1942, from origins in the Illinois, Indiana, and west Kentucky groups to seven representative suspended destinations in Illinois, and four representative comparative destinations in southern Wisconsin. The first page of Section VIII is a summary of the data given in the remaining four pages.

I should like to explain that the information contained [fol. 26] in Lines 13, 14 and 15 covers data from Illinois Origins to Illinois destinations for the year 1941 and the first six months of 1942.

Sections IX and X of the exhibit require no oral explanation, and will be dealt with by subsequent witnesses.

Section XI of the exhibit is a statement showing revenue loss if rates to representative comparative destinations in Southern Wisconsin were reduced to the same percentage of the H. & H. Scale rates that the present rates from Southern Illinois to Rockford, Illinois, are of the H. & H. Scale rates.

Mr. Bather: Mr. Examiner, before we proceed any further on that, I want to object to any reference in this case whatever to the Holmes & Hallowell Scale. I take the same position as I have in previous cases, that that scale has no application whatsoever in so far as the rates involved in this proceeding are concerned.

Mr. Zoll: Do you want a reply to that?

Mr. Bather: I don't care whether you reply to it or not, but I object to any reference to the Holmes & Hallowell Scale in this proceeding.

Mr. Zoll: Of course, that scale is used throughout the exhibits and the practical effect of your objection would be to call this hearing off and everybody go home.

Exam. Trezise: I don't believe it is necessary to talk [fol. 27] about it. We are going to receive evidence concerning comparative rates, and if the Holmes & Hallowell Scale doesn't prove anything, that is Mr. Robertson's hard luck.

The Witness: This Section will also be dealt with by subsequent witnesses.

(Respondent's Exhibit No. 4, Witness Robertson, marked and received in evidence.)

The Witness: My Exhibit No. 5 consists of four pages and is a revenue statement dealing with situations which would result if the suspended rates become effective versus if rates to the Beloit and other Southern Wisconsin destinations are reduced.

Like Section XI of Exhibit 4, my Exhibit 5 shows what the result of disapproval of the proposed increases might be, but in a somewhat different manner. This particular exhibit will be the subject of discussion by subsequent witnesses.

Exam. Trezise: Now, when you say the proposed increases, what increases are you talking about—the proposed increases in the state as well as interstate?

The Witness: The rates that are under suspension in these proceedings.

Exam. Trezise: Thank you.

(Respondent's Exhibit No. 5, Witness Robertson, marked and received in evidence.)

The Witness: My Exhibit No. 6 is a map showing in [fol. 28] different colors certain principal routes of movement of coal from the southern Illinois origin group to the representative suspended and comparative destinations. This map will be the subject of discussion by following witnesses.

(Respondent's Exhibit No. 6, Witness Robertson, marked and received in evidence.)

The Witness: I might add at this point that throughout my exhibits (excepting the rate history) all rates are shown without the Ex Parte 148 increases. In the rate history, the Ex Parte 148 increases are shown. Since the preparation and distribution of my Exhibits 3 and 4, a Committee of carriers' representatives has reviewed the two exhibits, as well as the exhibits distributed by other parties to this proceeding. Some corrections have been deemed necessary and I have passed around to those here present copies of two exhibits identified as "3-A" and "4-A" naming such changes.

Exhibit 3-A consists of 3 pages and contains corrections to be made in my Exhibit 3.

(Respondent's Exhibit No. 3-A, Witness Robertson, marked and received in evidence.)

The Witness: Exhibit 4-A consists of 4 pages and names corrections to be made in my Exhibit 4.

(Respondent's Exhibit No. 4-A, Witness Robertson, marked and received in evidence.)

The Witness: I have been requested to place into the [fol. 29] record a statement to the effect that all of the revised rates published in Supplement 21 to Gulf, Mobile & Ohio Railroad Company, I. C. C. No. 17 (also designated as Supplement 19 to Ill. C. C. No. 3) and which rates are under suspension in I. & S. Docket 5139 and Ill. C. C. Docket 30935 are all incorrect due to clerical errors.

I have been requested by the G. M. & O. Railroad to indicate the intention of that railroad to publish the same rates as other carriers serving the Belleville group, that is, the rates which are under suspension in these proceedings, and are agreeable to making publication as soon as possible when the suspension proceedings are out of the way.

Attention is directed to the fact that when schedules were filed with the Commissions and which contained rates which were suspended in these proceedings, the Minneapolis & St. Louis Railroad in Supplement 31 to I. C. C. B-1028, which is also Supplement 21 to Ill. C. C. 303, through inadvertence, failed to revise the published Fine Coal rate of 150 cents per net ton from the Fulton County Origin Group to Rockford, Illinois, on the Chicago and North Western Railway to 165 cents per net ton. I have been requested to state for the record that this situation will be corrected at the earliest possible date after these proceedings have been adjudicated.

In connection with suspended rates shown in Section III, attention is directed to the fact that through inadvertence, [fol. 30] the Pennsylvania Railroad failed to increase their present rates to the following destinations:

Page 2, from Brazil-Clinton to Amboy, Illinois; page 6, from Brazil-Clinton to Dixon, Illinois; page 7, from Brazil-Clinton to Forreston, Illinois; page 8, from Brazil-Clinton

and Linton-Sullivan to Freeport, Illinois; page 10, from Brazil-Clinton to Polo, Illinois.

By Mr. Zoll:

Q. Your reference to Section 3 was to Exhibit 4, is that correct?

A. Yes, that is correct, Exhibit 4. I am requested to announce the purpose of the Pennsylvania Railroad to correct these, and any others, situations at the first available opportunity following the adjudication of these proceedings.

That is all I have at this time.

Q. Is it not true, Mr. Robertson, that reference to Docket 28888 on Exhibits 3, 3-A, 4 and 4-A may be stricken?

A. That is correct.

Exam. Trezise: Is that all, Mr. Zoll?

Mr. Zoll: Yes, sir.

Exam. Trezise: Well, before we cross-examine, we are going to have a few minutes recess.

(A short recess was taken.)

Exam. Trezise: Gentlemen, let us proceed. Do you have any more direct questions?

Mr. Zoll: No, sir.

[fol. 31] Exam. Trezise: Do we have any cross-examination?

Mr. Wilkinson: I would like to ask a question or two.

Exam. Trezise: Mr. Wilkinson.

Cross-examination.

By Mr. Wilkinson:

Q. Mr. Robertson, in your Exhibit No. 2, you outlined in circles comparative points outside of the general territory affected; and in the territory affected you show suspended rates. Can you tell me why Beloit, Wisconsin, was not included in the list of destinations to which the rates were suspended?

A. This map shows the rates from southern Illinois, and there was no suspended rate from southern Illinois.

Q. But there are rates from Indiana, and I believe west Kentucky, to Beloit, that were suspended, isn't that right?

A. West Kentucky?

Q. I asked if there were.

A. I don't think so.

Q. Well, were there from Indiana?

A. Yes, from Indiana.

Q. They were suspended from Indiana to Beloit, but not from west Kentucky to Beloit, is that right?

A. Yes; that is correct.

Q. So that, so far as this exhibit is concerned, it deals solely with the situation from southern Illinois?

A. It so states on the face of it, Mr. Wilkinson.

[fol. 32] Q. And in your Exhibit No. 3, I believe it is, you show a list of destinations which are representative destinations, and then you show comparative points, and in the comparative points you show Beloit as a second comparative point.

A. That is correct.

Q. Is that because you understand that is not involved in these proceedings before the Commission at this time?

A. We chose it as a comparative point because it is right around the territory of the northern Illinois area involved in these proceedings.

Q. Well, is it not one of the points involved in these proceedings?

A. That is correct.

Q. And should it not be in the suspended points, so far as the proceedings as a whole are concerned?

A. Well, it was not suspended—the rates were suspended from only one or two Indiana origins, and there would have been no changed situation; there was no purpose in not putting it up there; it could have just as well been put up there.

Q. But in the sense that it is one of the cases that is involved in this proceeding, it is not a comparative point, but one of the very points that is materially in issue in this case?

A. That is correct.

Mr. Wilkinson: That is all.

[fol. 33] By Mr. Zoll:

Q. Right there, page 2 of Section 1 of Exhibit 4, shows that there are suspended rates to Beloit from Brazil and from Linton-Sullivan.

A. That is correct.

Exam. Trezise: And Princeton-Ayrshire, did you leave that out?

Mr. Zoll: The exhibit shows there are no suspended rates from that group.

Exam. Trezise: You mean that 239 was not suspended on the Princeton-Ayrshire to Beloit.

By Mr. Wilkinson:

Q. As a matter of fact, Mr. Robertson, is it not the case that the rates from the New York Central and from the A. W. & W. via the New York Central, and from points on the C. & E. I. and B. & O. to Beloit were suspended?

Exam. Trezise: Where from?

Mr. Wilkinson: From Princeton-Ayrshire via those roads to Beloit.

Exam. Trezise: From Princeton-Ayrshire via roads other than the Milwaukee?

Mr. Wilkinson: To Beloit.

The Witness: Yes, sir, that is correct.

By Mr. Wilkinson:

Q. And also other than the Southern. The Southern Railway did not increase those rates and there are no Southern rates from Princeton-Ayrshire under suspension?

A. That is my understanding.

[fol. 34] Mr. Wilkinson: To Beloit only.

Exam. Trezise: My statement was wrong here. I should have included the Southern.

Mr. Wilkinson: Yes.

By Mr. Wilkinson:

Q. Now, with respect to Boonville group in Indiana, that is served only by the Southern Railway, and those rates from Boonville were not increased and were not suspended?

A. That is my understanding.

Mr. Wilkinson: That is all.

Mr. Cardy: Mr. Wilkinson, you are talking about Beloit?

Mr. Wilkinson: Beloit, yes, sir.

Exam. Trezise: Do we have any further questions?

By Mr. Bather:

Q. Mr. Robertson, in your Exhibit No. 2, how and why did you arrive at the particular points that you call comparative points?

A. We originally in the old 13th Section Case selected, and we attempted to do it here, selected points that surrounded the area involved in the suspension proceedings and took points that looked alike, that might be reasonable consuming points.

Q. Now, take Apple River, for example. Is that comparative with the movement of coal to Rockford or Freeport?

A. Well, that was, I believe Apple River was selected because it was about the only point of any size up in that [fol. 35] northwestern corner of the state there.

Q. Well, I am talking about the volume of the movement to Apple River as compared with the movement in the territory where the rates are now under suspension; is there any comparison in the movement of coal to Apple River, for example, as compared with the points with which you make comparisons in the suspended territory?

A. I would much prefer that you would ask that question or address that question to the witness of the railroad on which Apple River is located. I know nothing about the movement of tonnage to Apple River.

Q. You don't know then why Apple River was selected as a comparative point?

A. That is true.

Exam. Trezise: Who selected Apple River?

The Witness: The carriers' representatives selected it.

By Mr. Bather:

Q. Well, does your testimony in that regard apply to the other points designated comparative points?

A. That is correct.

Q. You don't know why any of these points then were selected for a comparison of the rates in the suspended territory?

A. Excepting to the extent I know they attempted to pick points surrounding the suspended territory.

Mr. Bather: That is all.

Exam. Trezise: You got the information from these various railroads that those were the particular points, and you are merely showing them because of that?

[fol. 36]

A. Yes, sir.

By Exam. Trezise:

Q. You didn't just pick them out of the air yourself?

A. Oh, no.

Q. You relied upon these other railroads' information?

A. I was directed by them to do that, and we gave that list of points, as you will recall, to the parties at the prehearing conference.

Mr. Wilkinson: May I ask one other question?

Exam. Trezise: Mr. Wilkinson.

By Mr. Wilkinson:

Q. Mr. Robertson, in computing your distances in these exhibits which you have identified and introduced, did you not in some instances use distances shown in tariffs which were not in effect at the time you computed them, but some of which became effective March 25?

A. That is correct.

Q. So that your use of distances in this exhibit might vary somewhat from distances figured by other parties using tariffs that were in effect at the time of making up their exhibits?

A. That could be.

Mr. Wilkinson: That is all.

Exam. Trezise: Any further questions?

Mr. Vesey: I have one or two questions, Mr. Examiner.

[fol. 37] Exam Trezise: Mr. Vesey.

By Mr. Vesey:

Q. Mr. Robertson, I ask you to direct your attention to your Exhibit No. 1. Will you tell me first why the locality marked East Galesburg is circled in black ink on that exhibit?

A. This map is one that we have used in many cases, and it is a stock map that we have had for a long, long while, and I believe there was at one time a mine located at East Galesburg, but I don't believe it is now.

Q. Then in so far as this proceeding is concerned, Galesburg has nothing to do with it?

A. That is correct.

Q. One way or the other?

A. That is correct.

Q. Now, I notice on that map that in setting out your origin groups you have Atkinson and Alpha set out separately from Fulton County, is that correct?

A. That is correct, yes, sir.

Q. And on the map that I have, written in in ink, is the little town of Victoria.

A. That is correct.

Q. And that is separately shown and separately treated in your exhibits?

A. Yes, sir.

Q. Why, sir, will you tell me, did you not include Atkinson, [fol. 38] Alpha, Victoria in the Fulton County group?

A. There again, might I ask you to direct that question to the witness of the railroad that serves those origins. There is a very good reason, he will explain it to you.

Q. I am sure there is a very good reason. Who will that witness be?

A. That will be Mr. Nelson.

Q. Then am I to understand, in so far as these exhibits are concerned, that they merely reflect computations made by you with respect to origins and destinations which were given you by the several carriers that made the computations?

A. That is correct.

Q. So that, as for example, on your previous cross-examination here of destinations, when you use the term "representative" you merely use that term—I am using that as an example—just for the purpose of reflecting what someone else said was a representative destination and would be so described in their testimony?

A. That is correct.

Mr. Vesey: I think that is all.

Exam. Trezise: Any further questions?

By Mr. Cardy:

Q. Just one question, on your Exhibit No. 2, Mr. Robertson, there is a light line, dotted line at the top, Illinois Rate Committee Territory Boundary. Will you describe what

that Illinois Rate Committee Territory is, what it means?

[fol. 39] A. That is the territory where the Illinois Freight Association treats the rates applicable to various commodities, including coal.

Q. And the dotted line on the north is the northern boundary of that territory?

A. That is correct.

Q. Now, what is the territory just north of that? What is that territory just north?

A. That is designated usually as Western Trunk Line territory.

Q. Now, in answer to a question asked by Mr. Vesey with reference to the term "representative", that also applies to all these other adjectives you have used, "comparable" and—in other words, all you did was to examine the tariffs under instructions of the carriers, and prepare the tariffs. You offer no evidence with reference to the issue in this proceding?

A. I passed around copies of my testimony and that is very plain in there.

Exam. Trezise: And, Mr. Robertson, on that Exhibit No. 2, you have already corrected the notation on there. In a rectangle to the right it says "Indicate representative points to which rates are under suspension." Now, you explained about that being incorrect with respect to the rates from certain Indiana groups to Beloit?

The Witness: That is correct.

[fol. 40] Exam. Trezise: The other statement that you made was that the rates shown on there did not include increases. I understood you to say, the 148 increases?

The Witness: They do not.

Exam. Trezise: And when you have a note down there that says "Rates from Southern Illinois Group in cents per ton of 2,000 pounds, subject to Ex Parte 148 increase," you mean that it has not been subjected to the increase?

The Witness: That is right.

Exam. Trezise: You mean that it should be added in order to reflect that thing?

The Witness: That is correct, yes, sir.

Exam. Trezise: In other words, repeating it, it does not mean subjected to the increase.

The Witness: No, just subject.

Exam. Trezise: Any further questions?

[fol. 41] By Mr. Stadell:

Q. Referring to your Exhibit No. 3, I believe you stated that contains the detail underlying the various mileages you have computed from the various origins involved to the destinations involved?

[fol. 42] A. That is right.

Q. And those mileages that you show in Exhibit 3 are used as the basis for the comparison shown in your Exhibit No. 4 of the ton mile earnings produced by the present and suspended rates?

A. That is correct.

Q. And those mileages are also used in your Exhibit No. 4 to show the percentages that the various rates from the respective origin groups to the destinations involved are of the Holmes & Hallowell Scale?

A. That is correct.

Q. Now, your Exhibit No. 3-A contains certain numerous corrections which have been made in the mileages in your Exhibit No. 3, is that correct?

A. That is correct.

Q. And your Exhibit No. 4-A contains what—changes in rates or changes in mileages?

A. Corrections that should be made. There are changes in the computations made necessary by the changes in the mileages in Exhibit 3. In other words, when we changed the mileage from LaSalle on the Rock Island, that change should be reflected in the mileage and all the computations connected therewith in Exhibit 4.

Q. Have you made any computations to determine the extent to which the corrections shown in your Exhibits 3-A [fol. 43] and 4-A would change the ton mile earnings or the percentage of the Holmes & Hallowell Scale shown in your Exhibit 4?

A. Yes, they are all included. Each one is included in that 4-A.

Q. Well, you don't show in 4-A the extent to which the changes——

A. I show the applicable change.

Q. But you don't show the extent to which those changes in mileages would change the percentages of the Holmes & Hallowell Scale or the ton mile earnings produced by the present or suspended rates in your Exhibit 4?

A. Where it made a change in the Holmes & Hallowell Scale, that is shown in that exhibit.

Q. Maybe I am not clear on this. I wish you would show me in your Exhibit 4-A where any changes in the percentages of the Holmes & Hallowell Scale shown in Exhibit 4 are contained.

A. Well, here is one, the first page, page 11.

Q. Where is that shown in your Exhibit 4-A?

Mr. Zoll: Do you want this on the record?

Mr. Stadell: What I am driving at is this: He has made a study in his Exhibit No. 4 of the rates and the mileages from these various origin groups to the destinations involved, both the comparative and suspended points; and based upon the mileages shown in his original Exhibit No. 3, he has shown the ton mile earnings that are produced by the rates based on the mileages shown on Exhibit 3, and [fol. 44] also what percent the rates are of the Holmes & Hallowell Scale. Now, the changes shown in Exhibit 4-A would materially change the result shown in Exhibit No. 4 with respect to both ton mile earnings and the percentages that the rates are of the Holmes & Hallowell Scale, and I was wondering if we couldn't have a corrected Exhibit 4 incorporating all those changes.

The Witness: Here, Mr. Stadell, if you will refer to page 11 on line 13, under column F, the present exhibit shows 282; it should be corrected to 276. That is the percentage of your Holmes & Hallowell Scale and your ton mile earnings.

By Mr. Stadell:

Q. We would have to go through Exhibit 4, then, and show all the corrections shown on your Exhibit 4-A?

A. Yes.

Q. Have you recomputed in your Exhibit No. 4, have you recomputed the ton mile earnings and the percentages that the rates are of the Holmes & Hallowell Scale to reflect the changes in mileages shown in your Exhibit 3-A?

A. Yes.

Q. And we could by going through Exhibit 4-A insert each of those in your Exhibit 4, and that would be your corrected exhibit?

A. Yes, sir.

Mr. Stadiell: All right. Thank you very much.

Exam. Trezise: And for fear that somebody might not know, the Holmes & Hallowell Scale that you are talking [fol. 45] about here is the maximum Holmes & Hallowell Scale as prescribed, increased according to the general increases thereafter.

The Witness: That is correct.

Mr. Vesey: Except Ex Parte 148.

Mr. Zoll: Is that correct, Mr. Robertson?

Exam. Trezise: He says, except Ex Parte 148.

The Witness: My testimony is 148 increases are not included in anything but the rate history.

Mr. Vesey: In making your comparisons with the H. & H. Scale, you have taken the H. & H. Scale without the Ex Parte 148 increase on that scale?

The Witness: That is correct.

By Mr. Wilkinson:

Q. Is it your understanding, Mr. Robertson, that coal originating on the Pennsylvania Railroad at Terre Haute is not delivered to the Milwaukee at Terre Haute, but is hauled to Chicago by the Pennsylvania?

A. I don't know how their operating conditions are down there.

Q. Is it not a fact that under the tariffs, the Pennsylvania delivers to the Milwaukee at Terre Haute, that that is an available routine for the movement of coal originating at that point?

A. For the Pennsylvania to haul it to Chicago?

Q. No. Is it not your understanding that there is an available route from the Pennsylvania at Terre Haute via the Pennsylvania and Milwaukee—the Pennsylvania deliv- [fol. 46] ering to the Milwaukee at Terre Haute?

A. I think that the tariff is restricted so that that route does not apply from that one mine at West Terre Haute.

Q. Will you check that again? Can you check that again during the noon hour?

A. I will be glad to during the noon hour.

Mr. Wilkinson: Thank you.

Exam. Trezise: Do we have any further questions?

Mr. Morgan: Just one or two questions here I would like to ask this witness.

By Mr. Morgan:

Q. On Exhibit No. 2, if you please, referring to the points in Wisconsin which I understand you used as comparative points, are you informed with respect to the rates charged by the Wisconsin Commission or public authorities for transporting coal?

A. Not in this proceeding, I am not. I am acquainted with it, but not enough to talk about it in these proceedings, to these particular points. From what origin do you have in mind?

Q. Well, for example, do you know what proportion of the coal transported to these points in Wisconsin is coal which has been shipped across the lake, for example, by boat and picked up at Milwaukee?

A. No, I do not.

Q. Or other dock points on Lake Michigan?

[fols. 47-50] A. No, I am not acquainted.

Q. Have you considered whether that factor would or would not be material in arriving at the question as to whether the rates to the points you mentioned in Wisconsin, as shown on Exhibit 2, would be material in determining whether those rates were just and reasonable and also whether it would eliminate those points from what would be considered comparative points?

A. No, sir.

Q. Now, will you refer to Exhibit 5. I have just one or two questions. That is an exhibit or study, whichever you term it, as I understand, based entirely on the traffic for the year 1941, is that correct?

A. It says so on the title page, yes, sir.

Q. Well, I am just assuming that is correct.

A. Yes, sir.

Q. Did you make a study to determine what portion of that traffic might be less than carload lots?

A. No, sir. You mean the proportion of coal moving in less than carload lots?

Q. Yes.

A. The answer is, no.

Q. You have made no study of that?

A. No, sir.

[fol. 51] Exam. Trezise: Very well. Mr. Robertson, you indicated that you had no knowledge of the movement of coal from the Wisconsin docks to these destinations, and when you say "these" I think you had in mind Beloit particularly. Did you participate in the Fairbanks Morse case, out of which these proceedings seem to have had their origin, or at least they were encouraged by that case, which is 251 I. C. C. 181?

The Witness: No, sir.

Exam. Trezise: Then you are not familiar with the figure that was shown in appendix B, by the individual railroads, as to the movement of tonnage from those ports to Beloit?

The Witness: Only to the extent that I have read it. I am not familiar with the movement at all.

Mr. Zoll: I would like to ask a question or two about one point.

Exam. Trezise: All right, Mr. Zoll.

Redirect examination.

By Mr. Zoll:

Q. You said in your testimony, Mr. Robertson, that these exhibits were prepared by a committee of carriers, is that right?

A. Carriers' representatives.

Q. And that they were prepared by this committee under your personal supervision?

[fol. 52] A. That is correct.

Q. And you worked with the committee, is that correct?

A. Yes, sir.

Q. And you, working with the committee, and the committee decided that these points would be used in the carrier's exhibits as representative suspended and comparative points?

A. That is right.

Q. In your opinion and in the opinion of the committee they were representative?

A. Yes, sir.

Mr. Zoll: That is all.

Mr. Vesey: If the Examiner please——

Mr. Blaett: I wanted to wind that up with one further question.

Exam. Trezise: All right.

By Mr. Biaett:

Q. Did that committee which selected the suspended representative and comparative points include the coal traffic managers of the respondent railroads?

A. That is right.

Exam. Trezise: All right, Mr. Vesey.

Recross-examination.

By Mr. Vesey:

Q. Am I to take it from your last answer to Mr. Zoll, that your opinion as to whether or not these destinations in the compared territory—that your opinion was used in connection with the opinions of the others, as to whether [fol. 53] or not these destinations were representative destinations?

A. Yes, sure.

Q. So you have an opinion as to whether or not these destinations then are representative, is that right?

A. To the extent that they surround the suspended area.

Q. When did you determine that you did have an opinion as to their representative character? Since my last cross examination of you?

A. No. Since this thing started, we had this committee working and selecting these points, and we did the work.

Q. Well then, let us go back to the analogy that was first given to you on cross examination with respect to Apple River. What is your opinion as to the representative character of that destination and what destination in Illinois is it typical and representative of?

Mr. Zoll: I object to the form of that question. Let the question be, why do you think it is representative. Would that suit you?

Mr. Vesey: I will be glad to ask the question in that way. Surely, that will be all right.

Mr. Zoll: In other words, why did you use Apple River?

The Witness: Because it was a point in the northern, northwestern portion of the State of Illinois.

Exam. Trezise: By what did you measure a representa- [fol. 54] tive point—because it was a town of some size, because it received coal, or because it was located in some area?

The Witness: Just located in that portion of the state.

Exam. Trezise: You didn't take every little jerkwater town?

The Witness: No. We tried to, we selected certain representative points, as we call them. There is a stretch of territory up in that part of the state, and we thought we should have a point in that territory. So we selected Apple River.

Exam. Trezise: It was a town of some size and a little bit larger than the other towns around there and you selected it because it was up in that territory. Was that your measure?

The Witness: No, that wasn't mine. That might have been the reason the representative of the railroad on which Apple River is located had in mind, but I didn't have that in mind when I did my work.

By Mr. Vesey:

Q. What did you have in mind when you suggested these destinations were representative?

A. I didn't suggest them.

Q. You didn't suggest it. You just agreed to somebody else's suggestion?

A. We had a committee of the carriers' representatives, and the representative of the carrier on which Apple River [fol. 55] is located was there and we needed a point up in that territory, so we selected Apple River.

Q. Did you know at the time you made your concurrence in the determination of these representative destinations that there was coal moving to that destination?

A. No.

Q. You did not know that?

A. No, sir.

Q. That was immaterial then in your determination?

A. In mine?

Q. In yours.

A. Yes, sir,—not immaterial, but I didn't know. You asked me if I knew any coal moved there. I do not know.

Q. Did you make an investigation prior to that concurrence to determine if there was coal, from what origin group it arose?

A. No, sir.

Q. In other words, it just looked like a good place on the map to put a point, is that right?

A. Well, that is kind of a crude way of putting it.

Q. The net effect is the same, isn't it?

A. You are right there.

Q. I say, the net effect is the same?

A. Sure.

Mr. Vesey: Thank you.

[fol. 56] Exam. Trezise: Mr. Robertson, you don't mean to create the impression in the mind of the Commission that you don't know anything about these towns and you are a perfect stranger out here and you don't know anything about rates, tariffs, and movements of coal?

The Witness: I have a slight knowledge.

Exam. Trezise: You do have qualifications, or do you?

The Witness: I have slight qualifications, yes, sir.

Exam. Trezise: That is the answer to my question. All right, gentlemen.

Mr. Bather: May I ask a question, please?

Exam. Trezise: All right, Mr. Bather.

By Mr. Bather:

Q. Mr. Robertson, in your Exhibit No. 5, showing tonnage and revenue figures, why did you select the year 1941 as against the comparisons in your other exhibits where you used the year 1941 and the first six months of 1942?

A. This is a yearly statement. It is a statement for a year. I don't think the figures were available at the time this exhibit was made up for the year 1942.

Q. As I understand it, at the conference on November 24, it was understood that the tonnage and revenue figures would be predicated upon the movement from July 1st, 1941, to July 1st, 1942, and that is the purpose of my question.

A. No, that was not the agreement at the prehearing con-[fol. 57] ference.

Q. That was my understanding.

A. You would have to read the order. The order states that certain of the carriers were making tonnage statements for the period you mentioned and some were using a year and some were using a year and six months. That is included right in the order.

Q. But you did compute your tonnage figures in your Exhibit No. 3, I think it is, for the full year of 1941 and six months of 1942?

A. That is right.

Q. So that, that might reflect a different conclusion as to the tonnage and revenue for the period from July 1st, 1941, to July 1st, 1942?

A. Oh, it would, of course.

Mr. Bather: That is all.

By Mr. Stadell:

Q. I have just one question. Going back to Apple River for a moment, that is in Illinois, isn't it?

A. Yes, sir.

Q. Has the Interstate Commerce Commission prescribed any of the present rates from the Illinois mines to Apple River?

A. Has the Interstate Commerce Commission?

Q. Yes.

A. You mean in 23130?

Q. Yes, or in any other case?

[fol. 58] A. I don't recall.

Q. Are the rates from the Illinois mines to Apple River held at their present level by any order of the Illinois Commerce Commission?

Exam. Trezise: You mean either maximum or minimum?

Mr. Stadell: Yes, either maximum or minimum, or both.

The Witness: Well, Apple River, as I understand it, is intermediate to Dubuque, up there around Galena. I don't recall at the moment.

Mr. Stadell: Well, will you verify that?

The Witness: I will verify that.

Exam. Trezise: All right, gentlemen, if there are no further questions, we will adjourn until 2 o'clock, and when we resume this afternoon, I would like you gentlemen to give some consideration in the meantime to how we are progressing with the case and the probable time it will take to put in the evidence. We stand adjourned.

(Witness excused.)

(At 12:30 o'clock P. M. recess taken to 2 o'clock P. M.)

Afternoon Session

The hearing was resumed pursuant to recess. 2 o'clock P. M.

Exam. Trezise: All right, gentlemen, when you are ready, we will continue.

W. H. Robertson resumed.

[fol. 59] Examination.

By Mr. Zoll:

Q. Mr. Robertson, you were asked two questions by counsel. You are prepared now to answer those questions, I believe.

A. Yes, sir.

Q. Proceed.

A. In answer to Mr. Stadell's question——

Mr. Morgan: What questions were they, counsel?

Mr. Zoll: He will tell you and then answer them.

Mr. Morgan: Well, I think the question should go in the record, so we will know whether his recollections are correct or not.

The Witness: In answer to Mr. Stadell's question as to whether the rates to Apple River had been prescribed by the Illinois Commission, as far as I know, they have not.

By Mr. Stadell:

Q. What was your answer to the question that I asked you with respect to whether the Interstate Commerce Commission has prescribed the present rates from any of the Illinois groups to Apple River?

A. As far as I know, they did not.

By Mr. Zoll:

Q. Didn't Mr. Wilkinson ask you a question too, or am I wrong about it? Didn't he ask you about the Pennsylvania movement at Terre Haute?

A. In answer to Mr. Wilkinson's question with respect to [fol. 60] whether the tariff provided for a route from Terre Haute in connection with the Pennsylvania and Milwaukee Railroad, the tariff has such a route in it.

By Mr. Wilkinson:

Q. That would reduce the distance that you show from that one point, would it not?

A. If it were used, yes.

By Mr. Stadell:

Q. Do you know whether any of the coal from the mines involved moves over that route?

A. No, sir, I believe not.

Mr. Stadell: That is all.

Mr. Zoll: That is all.

Exam. Trezise: If there are no further questions, you may be excused, Mr. Robertson, subject to being recalled in case any witnesses that follow you cannot answer the questions concerning which you testified.

The Witness: Thank you, sir.

(Witness excused.)

Mr. Zoll: I call Mr. Hamilton. Mr. Hamilton will introduce no exhibits, but he has a prepared statement which he will read and which has been distributed.

B. M. Hamilton was sworn and testified as follows:

Direct examination.

By Mr. Zoll:

Q. Please give your full name to the reporter.

A. B. M. Hamilton, Assistant General Freight Agent, [fol. 61] Illinois Central Railroad, 135 East 11th Place, Chicago.

Q. Would you please describe generally the nature of your duties?

A. My work is in connection with the rate adjustments on coal and coke.

Q. Have you been connected with that work for any length of time?

A. Yes, I have been either in the general freight office or in the office of the coal traffic manager for the past 28 years.

Q. Please explain the immediate occasion for the publication of the rates herein suspended and for the filing of the thirteenth section petition in Docket 28881.

A. The rates on coal suspended in these proceedings are the result of compliance with the order of the Interstate Commerce Commission in Docket 25419, 251 I. C. C. 181, in which the rates from Illinois, Indiana, and west Kentucky to Beloit, Wisconsin, were found not unreasonable but unduly prejudicial to Beloit and unduly preferential of Rockford, Illinois, to the extent that the rates to Beloit exceed

by more than 15 cents per ton the contemporaneous rates to Rockford. The difference in the rates to Rockford and Beloit being 30 cents, the carriers had the option of reducing the rates to Beloit 15 cents, or of increasing the rates to Rockford 15 cents.

Considering the fact that the rates to Rockford and re-
[fol. 62] lated northern Illinois points are on a lower level than the rates to the surrounding territory, a fact which was recognized by the Interstate Commerce Commission in the former 13th Section case, I. C. C. Docket 25130, 182 I. C. C. 537, at page 564, and in view of the fact that the Interstate Commission in Docket 25419 found the present rates to Beloit not unreasonable but said that they were relatively low, 231 I. C. C. 181, at page 199, the carriers, rather than make a further reduction to Beloit, complied with this Section 3 order by increasing the rates to Rockford, Illinois, 15 cents per ton, grading the rates back at intermediate points.

Exam. Trezise: By proposing to increase, is that right?

The Witness: Yes, by proposing to increase.

The Illinois Commerce Commission under Docket Ill. C. C. 30035, suspended the intrastate rates proposed in the adjustment. That suspension created, as I shall later show, undue, unreasonable, and unjust discrimination against interstate commerce, and undue and unreasonable advantage, preference, and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand.

Thereupon, because of the suspension of the state rates and the impracticability of increasing interstate rates without a similar increase in the state rates, the carriers filed a 13th section petition with the Interstate Commerce Com-
[fol. 63] mission and advised that Commission that they had no objection to the suspension of the interstate rates.

The interstate rates were then suspended under I. & S. Docket 5139, and the Interstate Commerce Commission in Docket 28881 did institute an investigation under section 13 into the Illinois intrastate rates which the carriers were required to maintain in effect because of the suspension by the Illinois Commission.

By Mr. Zoll:

Q. With the rates from what origin groups are you going to deal in your testimony?

A. In my discussion regarding the rates shown in Mr. Robertson's exhibits my remarks will be directed to the rates from the base group, southern Illinois, and related groups, DuQuoin, Belleville, Centralia, Springfield, and west Kentucky. Other witnesses to follow will discuss the rates from the southern Illinois, Centralia, Springfield groups, other Illinois groups, and Indiana groups. Any reference made to present or proposed rates will refer to the basic rates and they are subject to the 5 cents per ton increase under Ex Parte 148 and Ill. C. C. 30546.

Q. By which you mean that those increases are not within the rates you mentioned?

A. They have not been included in the rates that are shown and to which I will refer.

Q. Now that you have stated the immediate reason for [fol. 64] these proceedings, I wish you would go back and explain briefly the background of the rates to northern Illinois and southern Wisconsin to the extent that that bears on the issues in these cases.

A. The Illinois Commerce Commission, by its order of March 7, 1928, in Chamber of Commerce of Freeport v. B. & O. R. R. et al, Docket No. 13558, and Rockford Manufacturers and Shippers Association v. B. & O. R. R. et al, Docket No. 13569, required the reduction of the rates on coal from the Danville, northern Illinois, Fulton County, Peoria, Springfield, Centralia, Belleville, DuQuoin and southern Illinois groups to Rockford and Freeport. The Commission said that inasmuch as the complainants received the greater part of their coal from the southern Illinois group, it would deal with the rates from the southern Illinois group to Rockford and Freeport and would not attempt to change the differentials between the various origin groups. It reduced the rates from the southern Illinois group to Rockford and Freeport from $2.17, to $2.00 and continued in effect the differentials that existed between the rates from the southern Illinois and the other Illinois groups, except the northern Illinois group. The effect of the orders in these two cases was to reduce the rates from all the Illinois groups to Rockford and Freeport by 17 cents per ton, except from northern Illinois, which the Commis-

sion required to be reduced from $1.47 to $1.00 per ton, [fol. 65] a reduction of 47 cents. This reduction to $1.00 of the rate from northern Illinois to Rockford and Freeport compelled the carriers to reduce the rates from northern Illinois to Dixon to $1.00 also, in order to avoid departures from the long-and-short-haul provision of the Illinois Public Utilities Act.

The Illinois Commerce Commission, by its order of May 6, 1930, in Sandusky Cement Co. v. I.C.R.R. et al, Docket No. 14009, required the reduction of the rates on coal from the Springfield and southern Illinois groups to Dixon, the rate from southern Illinois to Dixon being ordered reduced from $2.04 to $1.90, and the rate from the Springfield group to Dixon being ordered reduced from $1.74 to $1.60, a reduction of 14 cents per ton in both rates.

The complaint in that case involved only the rates from the southern Illinois and Springfield groups, but in order to avoid departures from the long-and-short-haul provision of the Illinois Public Utilities Act, it was necessary to reduce also the rates from the DuQuoin, Belleville, and Centralia groups from $1.94 to $1.90 so that the rates from those groups would not exceed the rates from the more distant group, southern Illinois.

The rates prescribed in the Rockford-Freeport Cases were published effective August 20, 1930, and in the Dixon Case effective July 1, 1930.

[fol. 66] Thereafter, upon petition of the principal railroads operating within the State of Illinois, alleging a violation of Section 13 of the Interstate Commerce Act, the Interstate Commerce Commission entered upon an investigation in Docket 23130 concerning the lawfulness of all rates and charges for the intrastate transportation of bituminous coal in carloads from mines in Illinois to destinations in Illinois. That Commission, after extensive hearings and after careful consideration, issued its report in that proceeding, decided March 8, 1932, and reported in 182 I.C.C. 537.

The Commission considered, among others, the rates to Rockford, Freeport, and Dixon which as I have explained had been prescribed by the Illinois Commission, and in their report stated that the rates to these destinations were "well below the reasonable level of rates in this territory," but that since that appeared to be true also of most of the rates from the Indiana groups to those same points, there

was not sufficient justification for requiring any of the intrastate rates to Rockford, Freeport, or Dixon to be increased "until and unless the interstate rates from Indiana groups to the same destinations are increased to a level more nearly commensurate with the general level of the rates on coal in this territory." (182 I.C.C. 537, at page 564.)

The present intrastate rates to Rockford, Freeport and Dixon are the same as those prescribed in those three cases [fols. 67-71] by the Illinois Commission, except that they have been since generally increased 10 cents per ton following Ex Parte 115, reopened, in Ill. C.C. 23208.

Q. Please state the position of the carriers with respect to the rates involved in these cases.

A. As I have explained, the carriers have now proposed increases in the interstate rates from mines in Indiana to this northern Illinois territory centering around Rockford, Freeport and Dixon. Such increases bring those rates up to a level more nearly commensurate with the general level of the rates on coal in this territory, and such increased rates as well as other interstate rates in this territory, are reasonable interstate rates.

Q. It is understood, of course, that those are the ones that are suspended, is that right?

A. Yes. The carriers have also proposed increases in the intrastate rates to this same territory. They are of the opinion that such proposed increased rates are reasonable and otherwise lawful under the Illinois law, and that the Illinois Commission, by suspending those rates and thus requiring the carriers to maintain in effect intrastate rates on coal lower than the reasonable existing interstate rates in this territory and lower than the reasonable suspended interstate rates from the Indiana group, is causing violations of section 13 of the Interstate Commerce Act.

[fol. 72] Q. Would you please look at Mr. Robertson's Exhibit No. 4. You will note that Section 1 of that exhibit sets forth a chronological history of the rates to Beloit, Chicago, Dixon, Freeport and Rockford. I wish you would select one of these destinations and explain for us briefly [fol. 73] what the principal changes in the rates have been and why they are made.

A. I will take the rates to Rockford, on pages 8 and 9 of Section 1 of Exhibit No. 4. Effective December 1, 1910, the rates to Rockford from both Illinois and Indiana Groups

were increased 10 cents per ton. However, the Illinois Railroad & Warehouse Commission, by its order of November 28, 1910, held that that increase should not have exceeded 7 cents per ton, and the rates were accordingly revised, effective December 10, 1910, to reflect a 7-cent increase over the rates in effect prior to December 1, 1910. Effective December 1, 1916, all rates were increased 5 cents per ton on interstate traffic only, and effective April 15, 1917, the Illinois Commerce Commission allowed the rates on Illinois intrastate traffic to be increased by 5 per cent with a maximum of 5 cents per ton.

Effective July 1, 1917, the interstate rates were increased 15 cents under Ex Parte 57, and on October 16, 1917, the intrastate rates were increased by the same amount. The increases of June 25, 1918, were made under authority of General Order No. 28, and on October 5, 1918, slight readjustments were made due to disposition of fractions in publishing the rates under that order.

Effective September 1, 1919, rates were originally established from the west Kentucky group with a differential of 25 cents over southern Illinois, under authority of the Inter- [fol. 74] state Commerce Commission's order in Docket 9517, 53 I.C.C. 148.

Effective August 26, 1920, under Ex Parte 74, the interstate rates from Illinois and Indiana were increased 40 per cent. The rates from western Kentucky were increased 33⅓ per cent and the Illinois intrastate rates were also increased 33⅓ per cent, since that was the maximum allowed by the Illinois Commerce Commission. As a result of this situation, the carriers filed a 13th Section petition with the Interstate Commerce Commission, and that Commission, after investigation, issued an order in Docket No. 11703, 60 I.C.C. 92, requiring the Illinois intrastate rates to be increased 40 per cent over the rates in effect prior to August 26, 1920. Such increased intrastate rates became effective February 19, 1921.

On July 1, 1922, all rates were reduced 10 per cent pursuant to the order of the Interstate Commerce Commission in Reduced Rates, 1922, 68 I.C.C. 676. Effective July 19, 1925, changes were made in the interstate rates to comply with the opinion and findings of the Interstate Commerce Commission in The Illinois Coal Cases, 1920, 62 I.C.C. 741, which required restoration of the origin group relationship which had been disrupted by the percentage increases of

August 26, 1920. A corresponding adjustment was made in the intrastate rates on May 20, 1926.

On October 20, 1927, rates from western Kentucky were [fol. 75] increased 10 cents per ton in order to place them on a differential of 35 cents over the rates from southern Illinois, which differential was prescribed by the Interstate Commerce Commission in Docket No. 16340, 128 I.C.C. 255.

I might add here with respect to the rates to Dixon, that on July 1, 1930, in compliance with the order of the Illinois Commerce Commission in Docket No. 14009, previously referred to, a rate of $1.90 was published from southern Illinois to Dixon, a reduction of 14 cents per ton, the $1.90 rate being also observed as a maximum from intermediate groups, DuQuoin, Belleville, and Centralia. The rates from the Springfield group to Dixon were also reduced 14 cents per ton from $1.74 to $1.60, the southern Illinois and Springfield groups being the only groups mentioned in this order. These changes in the Dixon rates are shown on page 5 of Section 1 of this same Exhibit No. 4.

Returning to the rates to Rockford, effective August 20, 1930, under Ill. C.C. Dockets 13569 and 13558, which I have mentioned before, rates to Rockford and Freeport from all groups, except northern Illinois, were reduced 17 cents per ton. From northern Illinois the rates were reduced from $1.57 to $1.00 and the $1.00 rate was observed as a maxima to Dixon.

On November 15, 1937, rates were increased 10 cents per ton under Ex Parte 115 (reopened) and Ill. C.C. 23208. [fol. 76] On March 18, 1942, the interstate rates were increased 5 cents per ton under Ex Parte 148, and after a corresponding increase in the intrastate rates was refused by the Illinois Commission, the carriers filed a 13th section petition with the Interstate Commission, whereupon the Illinois Commission gave further consideration to its action and subsequently permitted the increase to be made on intrastate traffic. The state rates were then increased 5 cents per ton effective April 20, 1942.

Q. You have explained that the carriers here propose a 15-cent increase in the rates to Rockford. Will you please explain what increases are proposed to the other points in this destination territory.

A. The important points in this adjustment are Rockford and Freeport where an increase of 13 cents per ton is

proposed, this same increase being extended east to Belvidere, Illinois.

Mr. Cardy: No, Mr. Hamilton, you are not talking about northern Illinois when you say 15 cents, as I understand your testimony; you are not dealing with the northern Illinois situation?

The Witness: No, sir, I am not. The increase as shown on Robertson's Exhibit No. 2 is graded back in the following manner: To destinations on the Milwaukee Railroad, Forreston, and Byron, the increase is 10 cents per ton, which also sets the rate to Polo. The route from the south-[fol. 77] ern Illinois group to Chicago, via the North Western Railway from Peoria through Nelson sets a maximum of $2.05 (the Chicago rate) to Dixon, Rochelle, DeKalb, and Geneva. Sterling is continued the same as Dixon, and the Dixon rate also sets the rate to Amboy. To all of these stations an increase of 5 cents per ton is proposed. This is the same grading used in a former proposed adjustment which the Interstate Commerce Commission approved in I. & S. Docket 4368, 232 I. C. C. 151.

By Mr. Zoll:

Q. Are the present origin relationships continued under the proposed adjustment?

A. The present differentials under southern Illinois from DuQuoin, Belleville, Centralia, and Springfield, Illinois, groups are not disturbed, and the west Kentucky differential of 35 cents over southern Illinois is continued.

Q. What have you to say with respect to the level of the present and suspended rates to this northern Illinois territory?

A. That the present and suspended rates are on a low level can be seen from Section III of Exhibit No. 4. A summary of the data in that section, with respect to the rates from Southern Illinois, can be found in Section VII of the same exhibit, and it is Section VII to which I will direct my attention. If you will look at line 23 of page 2 of Section VII, covering Rockford, it will be seen that the average distance from the southern Illinois group is 369.2 [fol. 78] miles and the present rate is $2.10, which is only 61.2 per cent of the H. & H. scale. The suspended rate is $2.25, which is 65.6 per cent of the Holmes & Hallowell scale.

To Freeport, the average distance from the southern Illinois group is 371.2 miles. The present rate is $2.10, which is 60.2 per cent of the H. & H. scale, and the suspended rate is $2.25, which is 64.5 per cent of the H. & H. scale.

Q. Right there, Mr. Hamilton, section VII of this exhibit, page 2, column K, line 15, shows that the suspended rate of $2.25 is 65.6 per cent of the H. & H. scale. You say it is 64.5. I should also have said column L as well as K.

A. Those have both been corrected by Mr. Robertson's Exhibit No. 4-A to read 64.5.

Mr. Zoll: Proceed.

Mr. Wood: Which is correct?

The Witness: 64.5. To Dixon, the average distance is 311.2 miles. The present rate is $2.00 which is 63.9 per cent of the H. & H. scale, and the suspended rate is $2.05, which is 65.5 per cent of the H. & H. scale.

The present rates from southern Illinois range from 54.4 per cent of the H. & H. scale at Belvidere, to 63.9 per cent at Amboy and Dixon.

By Mr. Zoll:

Q. That is to the destinations as to which there are suspended rates?

A. To the representative destinations that are shown here [fol. 79] on this section VII of Exhibit 4.

Q. You don't mean comparative destinations—representative suspended?

A. Suspended destinations.

Q. Yes. Proceed.

A. The suspended rates from southern Illinois range from 58.3 per cent of the H. & H. scale at Belvidere to 65.6 per cent at Rockford. The earnings under the present rates range from 4.8 mills per ton mile at Belvidere, to 6.4 mills at Dixon. The earnings under the suspended rates range from 5.1 mills per ton mile at Belvidere, to 6.5 mills at Amboy and Dixon.

Q. And there again the earnings under the suspended rates to Dixon have been corrected in Exhibit 4-A, as I under stand it?

A. Yes, sir, they have been corrected from 6.6 to 6.5 mills.

Q. What have you to say with respect to the level of the present rates to nearby points in Illinois, southern Wisconsin and eastern Iowa?

A. This information is shown in Section IV of Exhibit 4, but as before, for convenience, I will address myself to the summary in Section VII of that exhibit.

Beloit, Burlington, Ft. Atkinson, Janesville, and Madison, Wisconsin, are in southern Wisconsin territory where in the Lake Dock Coal Cases, Docket No. 14476, 89 I. C. C. 170, decided May 6, 1924, the Interstate Commerce Com- [fol. 80] mission fixed a rate of $2.75 as maximum from southern Illinois, and this rate, plus the Ex Parte 115 (reopened) increase of 15 cents per ton, which made it $2.90, is now in effect to Burlington and Madison, Wisconsin. The average distance from southern Illinois is 404 miles to Burlington and 420 miles to Madison, and to both points the present rates are 77.7 per cent of the H. & H. scale.

Under this adjustment the rate from southern Illinois to Lake Mills was $2.78, and, with the Ex Parte 115 (reopened) increase, is now $2.93, which for an average distance of 476 miles, is 71.5 per cent of the H. & H. scale.

The rates to a part of this southern Wisconsin territory were again before the Interstate Commerce Commission in Docket No. 20912 (164 I. C. C. 543) and maximum rates from northern Illinois were prescribed. When, in compliance with this order, reduced rates were published from southern Illinois and other related groups to continue the existing relationship with the rates from northern Illinois, such reduced rates were suspended in I. & S. Docket No. 3536.

In its report in I. & S. Docket No. 3536, 174 I. C. C. 545, the Commission stated that since in a number of cases they had prescribed interstate rates from and to points in central territory, which were approximately 85 per cent of the H. & H. scale, they did not feel warranted in approving as reasonable maxima the proposed rates, which were [fol. 81] 72 per cent to 79 per cent of this scale, or in condemning as unreasonable the rates then in effect, which ranged from 80 per cent to 87 per cent of the H. & H. scale.

To Janesville, the present rate is $2.79, which for an average distance of 422 miles, is 74.8 per cent of the H. & H. scale. To Ft. Atkinson, the present rate is $2.83, which for an average distance of 462.1 miles, is 71.1 per cent of the H. & H. scale. These rates were prescribed by

the Interstate Commission in Docket 25419, 251 I. C. C. 181. In this same order the Commission found the rates to Beloit not unreasonable but unduly prejudicial to Beloit and preferential of Rockford to the extent they exceeded the rates to Rockford by more than 15 cents per ton. The present rate of $2.40 from southern Illinois to Beloit is 64.3 per cent of the H. & H. scale and is already on a lower level than the rates to other representative points in Wisconsin to which the Commission has prescribed maximum rates.

To Dubuque, Iowa, the present rate on lump coal from the southern Illinois group is $2.89. This is the $2.74 rate which was prescribed as maximum reasonable by the Interstate Commerce Commission in Docket 26558, 232 I. C. C. 5, plus the Ex Parte 115 increase. The present rate is 77.5 per cent of the H. & H. scale. The rate of $2.45 which presently applies on fine coal, was established because of river competition.

[fol. 82] In I. C. C. Docket No. 23130 and related cases, 182 I. C. C. 537, the Interstate Commerce Commission found that Davenport, Iowa, Rock Island, Illinois and Moline, Illinois, should be treated as one industrial and commercial community and accorded the same rates. The Commission there prescribed a rate of $2.10 from southern Illinois to those points, which with the addition of the Ex Parte 115 increase is now $2.25, and equal to 68 per cent of the H. & H. scale. The same interstate rate, of course, applies to Rock Island and Moline and is equal to 68 and 69.2 per cent, respectively, of the H. & H. scale.

The intrastate rate to Rock Island and Moline from southern Illinois, however, is $2.20, or 5 cents less than the interstate rate, because the Illinois Commerce Commission ordered the Ex Parte 113 increase based on applying the scale to the rate from the Springfield group, with the same increase in cents per ton from southern Illinois, instead of concurring in the basis authorized by the Interstate Commerce Commission of applying the scale increase to the base group, southern Illinois, with the same increase in cents per ton from other related groups. This resulted in a 10-cent increase in the intrastate rates and 15 cents in the interstate rates.

To Clinton, Iowa, the Interstate Commerce Commission, in Docket 15228, 128 I. C. C. 293, approved as not unreason-
[fol. 83] able a rate of $2.34 from southern Illinois, but to

comply with the Fourth Section of the Interstate Commerce Act it was necessary to reduce the rate to the level of the rate to Davenport, or $2.10. The rate to Clinton now, with the addition of the Ex Parte 115 increase, is $2.25.

To Savanna, Illinois, the present rate on lump coal from southern Illinois is $2.49, which is the former rate of $2.34 increased under Ex Parte 115. The rates to Savanna have not been before the Illinois Commerce Commission, but it will be noted that the Interstate Commerce Commission fixed a rate of $2.34 to Clinton, Iowa, and the distance from southern Illinois to Clinton is less than to Savanna. The present rate to Savanna is 70.1 per cent of the H. & H. scale.

The rates to Apple River, Illinois, have not been before the Illinois Commerce Commission but are included in our exhibits because of the geographical location of Apple River. The present lump coal rate of $2.53 is 71.3 per cent of the H. & H. scale. The present fine coal rate of $2.45 is the result of a water competitive rate published in Dubuque, Iowa, and observed as a maximum at Apple River.

Q. What have you to say respecting the level of the rates to Chicago?

A. To Chicago, for an average distance of 334.8 miles, the present rate from southern Illinois is $2.05, which is 63.1 per cent of the H. & H. scale and which yields 6.1 mills [fol. 84] per ton mile. There are numerous decisions of the Interstate Commerce Commission recognizing the competitive conditions that keep the rates to Chicago below a maximum reasonable level. There is an exceedingly heavy movement of coal to Chicago, which is conceded to be the largest coal consuming district in the country. Section IX of Exhibit No. 4 shows the movement of bituminous coal to the Chicago District for the past 15 years from the Illinois, Indiana, and west Kentucky groups and from the Ohio and Crescent Districts, via rail and via rail and lake. In 1941, this movement amounted to 30,422,379 tons, and over the 15-year period 1927-1941, which includes the depression years, it averaged 27,276,761 tons.

Because the rates to Chicago are far below a maximum reasonable level, as a result of the very heavy movement to that district, which has produced intensive competition from many origins and via numerous routes, the rates to Chicago cannot fairly be used as standards of comparison in con-

sidering the reasonableness of the rates to the territory which is involved in these proceedings.

Mr. Bather: Now, I will object to that statement, because it is a conclusion, and there is nothing to base any such statement upon as far as the testimony is up to this time.

Mr. Cardy: The only basis would be the rail transporta- [fol. 85] tion to those points, and in the absence of that I will have to object to it.

Exam. Trezise: The sole reason you have for making that statement is the concluding figures, and is that what you base your opinion on?

The Witness: I base it on the figures that I have already given and the figures that follow, showing there is a movement of 27 to 30 million tons of coal into Chicago, and following this I am giving some figures as to the movement into the territory involved.

Exam. Trezise: I think the Examiner will have to admit that as being his opinion based on these facts. Proceed.

The Witness: The competitive conditions that prevail at Rockford, Freeport, Dixon, and the other northern Illinois destinations to which increases are here proposed are entirely different from those which prevail at Chicago. For example, while over thirty million tons of coal were received in the Chicago District in 1941, including almost ten million tons from Illinois, Indiana, and west Kentucky, only 870,722 tons moved from Illinois, Indiana, and west Kentucky in 1941 to the seven representative suspended destinations shown on Robertson's Exhibit No. 5. The tonnage to these destinations from the Eastern Fields is not available, but to that part of northern Illinois on and north of the Santa Fe Railway's main line between Chicago, [fol. 86] Streator, Galesburg, and Lomax, Illinois, except Chicago and Chicago rate points, which includes considerably more territory than is involved in these proceedings, there were 788,060 tons received from the East in 1941. (Authority: Chairman Kern's Statistical Report.)

By Mr. Zoll:

Q. What have you to say about Mr. Robertson's Exhibit No. 5?

A. Exhibit No. 5 shows on page 2 a statement of tonnage and revenue for the year 1941 on coal from mines in Illinois, Indiana, and west Kentucky to seven representative sus-

pended destinations—DeKalb, Dixon, Freeport, Geneva, Rochelle, Rockford and Sterling, Illinois—from which it will be seen that there was in that year a movement of 508,322 tons of coal from mines in Illinois via intrastate routes to those seven points, on which the revenue was $967,468. There was a movement of 60,550 tons from Illinois origins via interstate routes to these seven Illinois destinations, a movement of 268,707 tons from Indiana, and 33,143 tons from west Kentucky. The total interstate movement amounted to 362,400 tons, with revenue of $722,190.

Page 3 of Exhibit No. 5 shows the tonnage which moved in 1941 via intrastate routes from Illinois mines to the seven representative suspended destinations shown. This tonnage totals 494,472 tons. This figure differs, it will be noted, from the total of 508,322 tons on page 2. This [fol. 87] comes about by reason of the fact that from northern Illinois to Geneva no increase was made because Beloit rate is held as a maximum and from Fulton County to Sterling there was no increase as will be explained by a subsequent witness, and 13,850 tons moving from those groups to those destinations, while included on page 2, was not included on page 3 since the carriers will receive no greater revenue on that movement under the suspended rates. In the next column is shown in cents per ton the amount the carriers here propose to increase the rates from the Illinois groups to those seven destinations. In the next column is shown the amount of additional revenue which the carriers would secure, on the basis of the 1941 tonnage shown, if the intrastate rates proposed were to become effective. That additional revenue totals $53,866.90. In other words, because the Illinois Commerce Commission suspended the proposed intrastate rates, the carriers are now being prevented from earning that additional revenue.

Q. Right there, Mr. Hamilton, incidentally, how much of the tonnage shown in Exhibit 5 moved in less than carload lots?

A. It all moved in carloads.

Mr. Zoll: Proceed.

Mr. Morgan: Between all points?

The Witness: All this tonnage that we have reported is carload tonnage.

[fol. 88] Mr. Morgan: In other words, you don't unload at a given city part of the car and deliver the rest of it at the nearby town or village or something?

The Witness: No, sir.

Mr. McElroy: Mr. Hamilton, I take it, up to this point—I have been paying some attention to your recitation—that your testimony is principally addressed to the discrimination between state and interstate rates, and goes to your 13th Section case rather than a justification of the proposal to increase the Illinois intrastate rates?

The Witness: Well, it goes to the justification of the 13th Section case, which carries with it the increase in the Illinois intrastate rates.

Mr. McElroy: Yes, that is what I had in mind. It is your 13th Section complaint that you are proposing to justify now, rather than the increase in the Illinois intrastate rates before the Illinois Commerce Commission.

The Witness: This particular comparison here is to show that the intrastate rates are prejudicial to the interstate rates. I have already shown the level of the intrastate rates, both present and proposed.

Mr. Cardy: This intrastate rate, the present rate, 5 cents lower, or the proposed rate 5 cents higher—in other words, the rates that you have here exclude the increase of 5 cents under 148?

[fols. 89-91] The Witness: The increase under 148 is not included in these figures, no, sir.

Mr. Cardy: So that the present rates would be 5 cents higher than these rates shown here charged today?

The Witness: The rates including the 148 would be 5 cents higher. All my testimony has been toward the level of the base rates, not including Ex Parte 148 increase.

Mr. Cardy: Has this anything to do with the proposed rates that are not now in effect in Illinois?

The Witness: Yes, it has a lot to do with it.

* * * * * * *

[fol. 92] The Witness: As I previously explained, the rates from Illinois and Indiana mines to this territory are so related that in view of the suspension of the intrastate rates the carriers could not publish increases in the interstate rates from the Indiana groups nor from the Illinois mines from which interstate rates to this northern Illinois territory apply. Nor could they publish such increased rates from

west Kentucky since those rates are differentially related to the rates from southern Illinois. On page 3 of Exhibit No. 5 there is also shown, therefore, the amount of revenue which the carriers have been prevented from securing on the interstate coal traffic moving to the seven representative suspended destinations shown. This is figured in the same way as on the intrastate movement, and totals $50,648.30.

The total additional revenue which would accrue to the carriers if the proposed intrastate and interstate rates were to become effective, based on the 1941 movement to these seven destinations, is $104,515.20. Since this relates only to seven of the numerous points in this destination territory to which the proposed increases have been published to apply, the total revenue discrimination far exceeds that figure.

Page 4 of Exhibit 5 is self-explanatory, and shows what [fol. 93] the effect would be if the carriers had to comply with the order in Docket 25419 by reducing their rates to Beloit. Not only would they be forced to maintain their rates to this northern Illinois territory on the present low level, but that level would tend to spread into southern Wisconsin. Based on the 1941 movement to Beloit, the carriers would lose $21,142 if they had to reduce the Beloit rates 15 cents in order to comply with the order in Docket 25419. The carriers would, of course, vigorously oppose the extension of this low rate level further into Wisconsin, but the showing on page 4 of Exhibit No. 5 shows the potentialities in requiring a reduction in the rates to Beloit.

Section XI of Exhibit No. 4 indicates in another way the danger of using the low rates to Rockford to fix the level of rates to southern Wisconsin. The present rate of $2.10 per ton from southern Illinois to Rockford is 61.2 per cent of the H. & H. scale. If these commissions should deny the proposed increase to Rockford, and this same level of 61.2 per cent of the H. & H. scale were projected to Beloit, Ft. Atkinson, Janesville, and Lake Mills, Wisconsin, from all origin groups, the carriers' revenues, based on the 1941 tonnage to those points, would be reduced $38,509.

Going one step farther, if the present rates to Rockford are continued in effect, and in compliance with the Section 3 order in Docket No. 25419, the Beloit, Wisconsin, rates are [fol. 94] reduced 15 cents per ton from all groups, the resulting rate of $2.25 from southern Illinois to Beloit would be 60.3 per cent of the H. & H. scale. Applying this level of

60.3 per cent of the H. & H. scale to Beloit, Ft. Atkinson, Janesville and Lake Mills, Wisconsin, the carriers' revenues, based on the 1941 tonnage to those points from all groups, would be reduced $42,772.

The decision in this proceeding will decide whether the Interstate or the Illinois Commission is going to determine the level of the interstate rates into southern Wisconsin.

By Mr. Zoll:

Q. Have the carriers given any thought to whether the increased rates proposed would in fact yield increased revenues?

A. The carriers have given consideration to the effect of the proposed increased rates on their income and have concluded that there is no doubt but that the raising of the rates would increase their revenues substantially.

Q. What is the likelihood of the proposed increases resulting in the substitution of natural gas for bituminous coal in this destination territory?

Mr. Morgan: I object. The witness is not qualified to testify as to the use of natural gas and the plants that use it in this territory.

Exam. Trezise: Can you lay a foundation for the question?

[fol. 95] By Mr. Zoll:

Q. How long have you been dealing with coal rates on the Illinois Central?

A. 28 years.

Q. Does the Illinois Central serve this territory?

A. Part of it.

Q. In your construction in making of coal rates, don't you have to give consideration as to whether you are going to make money or whether it is going to drive the business to something else?

A. We have to give consideration to what effect the rate adjustment will have.

Mr. Zoll: I submit to that extent, Mr. Examiner——

Exam. Trezise: Well, the point the Examiner had in mind is this: What do you know about the use of gas in this territory, the probable use of it, whether it is supplied in this territory, and how you came about getting that information.

Mr. Zoll: That is the very question I asked him. In his answer he undertakes to tell just that.

Exam. Trezise: If he has said that he has been through this territory, that he knows what the pipe lines are in each of these towns, that he knows so much is consumed there, and how much it is, and what effect it has had on the coal, and the details of it—I didn't understand he had done that. Perhaps I was asleep.

[fol. 96] The Witness: Mr. Examiner, I haven't made the investigation to the extent that you indicate, but I have made some investigation.

Exam. Trezise: And that investigation consisted of what? Did you go to the territory?

The Witness: I didn't go personally, but——

Exam. Trezise: Did you visit the towns?

The Witness: I did not, but one of our representatives did and reported to me.

Exam. Trezise: Some one under your direction did this?

The Witness: Yes, sir.

Exam. Trezise: Very well. What was the report, then—as you have given it here? What have you given?

The Witness: I haven't given it yet. I haven't answered yet.

Exam. Trezise: All right. Now, if this investigation was made under your direction, you can surely give the result of this investigation. Go ahead.

Mr. Morgan: I presume the report of that investigation, Mr. Examiner, would be in writing and it will be available when we get to cross-examination, and that it would indicate the date of the report and all the other factors inquired into by the gentleman who made the investigation.

Mr. Zoll: Proceed, Mr. Hamilton.

The Witness: Natural gas is available to a part of this [fol. 97] territory by virtue of a pipe-line extension from a point near Geneseo, Illinois, from the pipe-line reaching Chicago. The extension goes in a northeasterly direction to the Illinois-Wisconsin State Line near Beloit. From this line and its branches, natural gas is available at Morrison, Sterling, Dixon, Mt. Morris, DeKalb, Belvidere, and the industrial district in southeast Rockford.

* * * * * * *

Exam. Trezise: May the Examiner ask you, Mr. Hamilton, [fol. 98] the information you gave in the last sentence,

I believe, that you read, on your testimony there, was the information that was given to you by the one that you directed to make the investigation, is that right?

The Witness: Yes, sir.

Exam. Trezise: Very well. We will let it stand at that and you may cross-examine, Mr. Bather.

Mr. Bather: All right, Mr. Examiner.

The Witness: However, in our judgment, and based on our past experience, I do not believe the proposed increases will result in any appreciable loss of coal tonnage to natural gas because the price of gas, sold for the heating of houses, small apartments, and hotels, and for use in laundries and small industries not located on railroad sidings, is higher than these consumers would have to pay for coal. These consumers in practically all cases are willing to pay more for gas because of the convenience, cleanliness, and ease of operation connected with the use of gas. The cost factor is not a consideration when converting from coal to gas. When a gas company seeks an outlet to take care of its surplus capacity while it is developing sufficient domestic outlets to take care of its entire supply of gas, the result is that to large manufacturing institutions the gas company usually makes any price that is necessary to get them to convert the plant from coal to gas.

. . . . . .

[fol. 99] Exam. Trezise: This is the information that you obtained through the men that you directed to make the investigation, and they reported to you, as a matter of fact, that it was the usual practice of gas companies to make any price that is necessary to get them to convert the plant, you say, from coal to gas. Did you get that information from them, or is that a conclusion you drew from some other observation that you made? Did the men give you this?

The Witness: No, sir, they did not. I got that from our past experience in connection with gas competition at other points.

Exam. Trezise: And that was not something that you gained from somebody else, but in the scope of your occupation you have had occasion, have you, to go out and find this to be a fact?

The Witness: That is the experience that we have had [fol. 100] in connection with competition of natural gas at various points on the line.

Exam. Trezise: And that comes from your own investigation and your own knowledge, and under those circumstances we will let that stand.

Mr. Morgan: Mr. Examiner, could the witness state the points which he refers to?

Mr. Biaett: He can upon cross-examination.

Mr. Morgan: We are dealing with a northern Illinois case here.

Exam. Trezise: I think it would be proper to state what points you have in mind, where this applies.

Mr. Morgan: The points on which he bases this information on or obtains this information on, as he applies it to northern Illinois.

Mr. Zoll: It seems to me, Mr. Examiner, that is proper cross-examination.

Exam. Trezise: No, that is in explanation, as I understand it, of his statement. When you say, it usually is true, this particular fact that is stated, now, do you mean in this territory, of course, northern Illinois?

The Witness: No, not exactly northern Illinois, because we haven't had that same experience in northern Illinois.

Exam. Trezise: Where did you mean then?

The Witness: Well, for example, at East St. Louis, where [fol. 101] they are right near coal mines, plants have gone to gas; out in Iowa the rates are considerably higher, they have gone to gas regardless of the freight rates.

Exam. Trezise: And you apply that principle as possibly being applicable to this northern territory at some time?

The Witness: Yes, sir.

Exam. Trezise: And you didn't mean to indicate that this statement applied particularly to these points up here?

The Witness: No, sir.

Exam. Trezise: But only in principle it might be applied?

The Witness: That is right.

Exam. Trezise: Does that answer your question, Mr. Morgan?

Mr. Morgan: Well, it answers nothing, in my judgment.

Mr. Zoll: Mr. Examiner, I think we are getting away from the purpose of this. We are trying to explain to these Commissions why we have undertaken to increase the rates.

Exam. Trezise: All right, Mr. Zoll, let us proceed.

The Witness: In many of these situations the delivered cost of coal is unimportant. Our experience has been that

if the gas company wants to take a plant they do so regardless of the delivered cost of coal.

By Mr. Zoll:

Q. What is the likelihood of coal being supplanted by fuel oil?

[fol. 102] A. Fuel Oil is used in this territory to some extent for domestic consumption, and where so used the situation is very similar to the use of gas. It is usually more expensive than coal, but it is used because of the convenience, cleanliness and ease of operation connected with its use. Cost is not a paramount consideration. While under present wa. conditions there is a limitation placed on the use of fuel oil, even under normal conditions the freight rate on coal has little if any effect on the development and use of natural gas or fuel oil. I do not believe the proposed increases will result in any substitution of fuel oil for coal.

Q. What is the likelihood of the proposed increases resulting in a greater use of coal from the eastern fields?

A. I do not believe that the proposed increases in freight rates will result in increasing the movement of coal from the Crescent Districts at the expense of Illinois, Indiana and west Kentucky because the rates on Eastern coal will still be much higher than the rates from the Central field. Where the eastern coal does displace Illinois, Indiana and west Kentucky coal, it is because of better quality, especially for certain purposes.

Q. What is the likelihood of the proposed increases resulting in diversion to other forms of transportation?

A. From the southern groups there is no trucking of coal [fol. 103] to this destination territory, and increasing the rates 15 cents per ton will not in my opinion cause any such trucking to begin. Another witness who will deal with the rates from the more northern groups will explain the situation with respect to those groups.

Mr. Zoll: Is there anything you want to add, Mr. Hamilton?

The Witness: I think not.

Exam. Trezise: We will take a few minutes recess.

(A short recess was taken.)

Exam. Trezise: Let us proceed, gentlemen.

Mr. Donoho: I would like to ask a few questions on cross-examination, Mr. Examiner, if the witness is ready for cross.

Exam. Trezise: Very well.

Mr. Biaett: I have some questions on direct examination.

Exam. Trezise: Very well. We will have the direct first.

Mr. Morgan: May I inquire, then, of the Examiner, is this witness being adopted by all of the other railroads?

Mr. Biaett: This witness is adopting all of the other railroads.

Morgan: What is that?

Mr. Biaett: This witness is testifying for all of the re-[fol. 104] spondent railroads.

Mr. Morgan: Very well.

Exam. Trezise: Proceed.

By Mr. Biaett:

Q. Mr. Hamilton, in the course of your direct testimony you referred to the decision of the Commission in Docket No. 25419. Would you state a little more fully the result of that decision in setting a differential between Rockford and Beloit and in prescribing rates to Janesville and Fort Atkinson?

Mr. Morgan: I object, because the decision should speak for itself and be offered so that each party can read it and make its own interpretation of it.

Mr. Biaett: I beg counsel's pardon, but the witness is entitled to state the background of this proceeding.

Mr. Morgan: He can't give an interpretation of the decision. It should speak for itself.

Exam. Trezise: We have to find out what he is going to say about it. I think we will let him answer that question.

The Witness: The decision in I. C. C. 25419 set maximum rates to Janesville and Fort Atkinson, which were published.

By Mr. Biaett:

Q. From what group were they prescribed?

A. They were prescribed from the Fulton-Peoria group with the provision that the present relationship should be maintained from the other groups.

[fols. 105-106] Q. Now, proceed.

A. In the same decision the Commission found the Beloit rates not unreasonable, but prejudicial of Beloit and pref-

erential of Rockford to the extent that they exceeded the rates to Rockford by more than 15 cents.

Therefore, the carriers were required to do one of two things—either reduce the rates to Beloit by 15 cents a ton or increase the rates to Rockford by 15 cents a ton.

Q. Now, if that alternative order had not been issued by the Commission, the carriers would not be proposing the increased rates under suspension in these proceedings, is that correct?

A. That is correct. The only purpose—excuse me, let me start that again. That is correct. The present adjustment was brought about entirely by the order of the Commission in the Beloit case, 25419.

Q. Now, from a rate-making standpoint is Beloit so situated that if you reduce the rates to Beloit it would jeopardize the adjustment of rates into the whole State of Wisconsin?

[fols. 107-108] The Witness: Yes, sir, that is correct.

Mr. Morgan: I think he should state what difference would be involved. For example, you have Beloit——

Mr. Biaett: Now, if you are not satisfied with the witness' answer, Mr. Morgan, you can trace him over all this whole territory on cross-examination.

Mr. Morgan: All right, we will trace him then.

Mr. Biaett: That will be your privilege.

Mr. Morgan: All right.

By Mr. Biaett:

Q. Now, Mr. Hamilton, in increasing the rates to Rockford, is the nature of this general adjustment of rates from the Illinois, Indiana and western Kentucky groups to northern Illinois such that the carriers took the position that in view of the decision of the Commission in 23130 and the decision in 25419, the rates should be increased to the general territory surrounding Rockford, such as Freeport, Dixon, Belvidere, Amboy and those points?

[fol. 109] The Witness: In increasing the rates to Rockford to comply with the order in 25419, it would not be [fol. 110] proper to make an increase to Rockford alone, but the territory there, Rockford and Freeport and Belvidere, are on the same basis as Rockford, and if a change was made to Rockford it would necessarily follow that the same change should be made to those points, and in making

an adjustment of that kind it is necessary to grade back so that it wouldn't be too abrupt a change. And I already explained why the grading to some of the intermediate points was made an increase of 10 cents and others 5 cents, to make what was considered a proper adjustment of rates into that territory.

Mr. Cardy: Now, I move to strike that answer out for the reason it is a conclusion of the witness and is something that the Commission must pass upon, based upon facts submitted. He talks about general levels where you have got a complicated rate situation, and that answer is a very dangerous answer, and I move to strike it out.

Exam. Trezise: The motion is overruled. Go ahead.

By Mr. Biaett:

Q. In Docket No. 23130 were the rates to these towns in northern Illinois, to which you have referred, omitted and not increased?

A. In a decision in Docket 23130, where the railroads asked the Interstate Commerce Commission to increase the rates to Rockford, Freeport and Dixon, they stated that they were on a lower level, lower than to the territory generally, [fol. 111] but that the same situation existed from Indiana, and therefore, an increase would not be ordered from Illinois unless or until the Indiana rates were on more nearly the same level as the Illinois rat into this territory.

. . . . . .

[fols. 112-115] By Mr. Biaett:

Q. Would the reduction of the rate to Beloit be consistent with the carriers' position of increasing the rates to this northern Illinois territory to a level commensurate with the interstate level of rates into Wisconsin?

. . . . . .

[fol. 116] The Witness: The answer to that question is, no.

Exam. Trezise: All right. Now, answer this question, Mr. Hamilton, do you know of any rate in the Illinois territory that is as low as $2.10 from southern Illinois for 369 miles, as the rate to Rockford?

[fol. 117] The Witness: No, sir, I do not.

Exam. Trezise: Do you know of a rate that the Commission passed upon from western Kentucky to Chicago?

The Witness: Yes, in I. C. C. 28629, they ordered a rate of $2.40 from West Kentucky to Chicago, and then reduced to $2.30.

Exam. Trezise: Do you know that request has been made to reopen that case?

The Witness: Yes, petitions to reopen the case have been filed and are pending, so far as I know.

Exam. Trezise: Do you have any questions, Mr. Stadell?

Mr. Cardy: Mr. Examiner, I have one question right on that particular point. Are you familiar with the rate from the southern Illinois to Chicago on ex-lake coal recently established by your company?

Mr. Biaett: I wish to object to that.

Exam. Trezise: Well, I think we will let him answer that. Do you know about an ex-lake rate on coal that the Commission approved to Chicago?

The Witness: Yes, sir.

Mr. Cardy: What is the rate?

The Witness: From southern Illinois?

Mr. Cardy: To Chicago.

Exam. Trezise: That is a lake-cargo coal rate, is that what you mean?

[fol. 118] Mr. Cardy: That is true. What is the rate?

The Witness: I believe it is $1.65.

Mr. Cardy: Now, what is your rate from Springfield, Illinois, to Chicago, for deliveries in the Chicago switching district on certain carload movements, which is lower than—strike it out—with deliveries to the Commonwealth Edison plant; give me the rate and the distance.

The Witness: You are asking about the local rate?

Mr. Cardy: Local rate.

The Witness: Not this lake-cargo rate?

Mr. Cardy: That is true; with deliveries to Commonwealth Edison plants, recently established.

The Witness: The rate from the Springfield district?

Mr. Cardy: It is all right. I just got that rate. This lake-cargo rate——

Mr. Wood: Mr. Examiner, are we on direct or cross?

Exam. Trezise: This is direct up to the present time, as I understand it.

Mr. Wood: I just wondered how many lawyers were going to take charge of the witness on direct.

Mr. Cardy: I was just asking about the level of the rates in order that the witness might give a full and com-

plete answer to the question. He only gave half an answer. I want him to give the full answer, and I think he has given it. Only I want to ask another question: whether or not [fol. 119] this $1.65 rate does not contemplate the movement of a carload of coal to Chicago through the Chicago switching district, placed upon a siding out here at South Chicago; does it not?

The Witness: It does and it applies only on coal that is to be delivered for cargo movement via lake to be delivered to the boat.

Mr. Cardy: That is exactly the same as a local movement to Chicago from southern Illinois, is it not?

Exam. Trezise: Well, do you know of any other rate like the rate from southern Illinois to Rockford, that is used in a proportional way, or is it trainload or something of that nature? Do you know of any rate that is as low as this rate to Rockford from southern Illinois?

The Witness: No, sir.

Mr. Cardy: Are you sure about that, Mr. Hamilton? If he is, just let him say so.

The Witness: Just one thing, Mr. Examiner, did I understand you to include in that the lake-cargo rate?

Exam. Trezise: You know, of course, that the lake-cargo rate is on a lower basis?

The Witness: Yes, sir.

Exam. Trezise: You know, do you, that the lake-cargo rates are usually made—not usually—you know that the lake-cargo rates from the east to Lake Erie ports are lower [fol. 120] than the track delivery rates, aren't they?

The Witness: I believe they are.

Exam. Trezise: And the rates to Chicago, the lake-cargo rates, are lower than the track delivery rates by about 50 cents, aren't they?

The Witness: Yes, they are; not quite 50 cents; that is what they tried to get.

Exam. Trezise: The rate to Rockford, is it a lake-cargo rate or track delivery rate?

The Witness: Track delivery rate.

Exam. Trezise: All right. I am coming right back to my original question. You answered it, no. But you don't know of any other rate that is as low as the rate from southern Illinois to Rockford for 369 miles. I think you have it in one of your exhibits.

The Witness: That is right.

Mr. Bather: May I ask, Mr. Examiner, is that answer predicated upon a rate within the State of Illinois, or does that apply to interstate rates from southern Illinois to interstate destinations?

The Witness: Well, I can't keep all of the mileages in my mind. That answer goes to either state or interstate.

Mr. Bather: In other words, your answer is, no, that there are no other rates, state or interstate, comparable with the present rate of $2.10 from southern Illinois to Rock-
[fols. 121-122] ford?

The Witness: That was not it. The answer was, or rather, the question was, did I know of any that were as low as that, and I said, no.

Mr. Bather: You don't know of any?

The Witness: I didn't say there were none.

Mr. Bather: But you don't know of any?

The Witness: No.

* * * * * * *

[fol. 123] Morrison Hotel, Chicago, Illinois,
March 19, 1943.

Met, pursuant to adjournment, at 10 o'clock A. M.

Before R. N. Trezise, Examiner, Interstate Commerce Commission. F. B. McElroy, Illinois Commerce Commission.

APPEARANCES:

As heretofore noted.

PROCEEDINGS

Exam. Trezise: Very well, gentlemen. We will continue.

Mr. Ehmann: Mr. Examiner, before you proceed, I would like to enter my appearance, if I may.

Exam. Trezise: Very well.

Mr. Ehmann: William F. Ehmann, 1 West Main Street, Madison, Wisconsin, appearing on behalf of the Wisconsin Coal Bureau, Incorporated, in Docket No. 28881, Docket No. 28888, and I. & S. Docket 5139. If petitions of intervention are necessary, Mr. Examiner, I will have them prepared.

Exam. Trezise: As far as the Interstate Commerce Commission is concerned, it is not necessary to file an interven-

ing petition in connection with the case where we have an I. & S. proceeding, and we are not hearing the 28888 yet.

Mr. Elliott: Mr. Examiner, I would like to enter my appearance, if I may. Joseph W. Elliott, representing [fol. 124] Fairbanks, Morse & Company, and Beloit Commercial Club, in Docket No. I. & S. 3139.

Exam. Trezise: Do we have any questions that anyone would like to ask Mr. Hamilton?

Mr. Wilkinson: In due course I have a few that I would like to ask him.

Exam. Trezise: Very well, Mr. Wilkinson, proceed.

B. M. Hamilton resumed:

Cross-examination.

By Mr. Wilkinson:

Q. Mr. Hamilton, in your statement yesterday you said you were going to talk only about the Illinois rates into this territory, but you made some statements regarding the level of the interstate rates from Indiana, referring to the decision of the Interstate Commerce Commission in 182 I. C. C. 537, the old 13th Section case. Now, is that language referred to in your statement at page 4, which I take to be a quote or a summary of the language of the Interstate Commerce Commission, is that the only knowledge you have regarding the level of the rates from Indiana into this territory?

A. That is not the only knowledge, no, sir. That reference to the decision of the Commission was given as one basis for our publishing these increased rates.

Q. In your statement that you made yesterday you were [fol. 125] not, as I understand you, expressing any opinion of your own, however, as to whether the rates from Indiana to this involved territory were on a higher or lower or the same level as the rates from Illinois to the involved territory.

A. My discussion regarding the rates was in connection with the rates from Illinois, and the reference to the level of the rates was simply given to indicate the basis for our proposed rates and why we increased them instead of reducing Beloit.

Q. Well, if the exhibits of the carriers should indicate or do indicate that the level of the rates from Indiana are

now higher than the level of the rates from the Illinois origin groups to this territory, would you still think it would be necessary to increase the rates from Indiana?

A. Yes, sir, I would.

Q. Is that because of your anxiety to comply with the Commission's order affecting the rates to Beloit, or because of the 13th Section petition that is pending, that you make that answer?

A. Well, not any particular anxiety; it is on account of our being required by the Commission to publish certain rates, making them applicable to Beloit, and we don't want to unnecessarily reduce the rates and lose our revenue and possibly jeopardize the adjustment of rates to other points.

Q. Well, is there any reason that you may have why the level of rates within Illinois to this territory should be lower [fol. 126] than the level of rates from Indiana to this territory?

A. Well, in the 13th Section case we were unable to get the Illinois rates increased unless the Indiana rates were also increased, and whether they are on exactly the same level, it is probably very difficult to bring that about.

Q. Well, how about it being approximately the same—would you think that would be proper?

A. Well, in some cases the Indiana rates are on a lower level now.

Q. Well, I am asking you if you think it would be proper to have the average of the rates from Indiana and the average of the rates from Illinois points into this territory on approximately the same level.

A. Yes, I think they should be on about approximately the same level.

Q. If your exhibits show that the proposed rates from the Illinois points to these involved destinations shown on Exhibit 2 were approximately the same level as the present rates from the Indiana groups to these same destinations, do you still think it is necessary to increase the rates from Indiana to these destinations?

A. Yes.

Q. Why?

A. Because the Commission has already told us that they will not increase the Illinois rates unless the Indiana rates [fol. 127] are increased.

Q. Well, you are familiar with the proceeding in which that statement was made; you were in that case, were you not, Mr. Hamilton?

A. Yes, sir.

Q. And you know that that statement was predicated on a comparison of rates from certain Indiana groups to Rockford and rates from southern Illinois to Rockford in which the distances from Indiana were the average of the short tariff routes, while the distances from southern Illinois were the so-called rate-making line route?

A. No, sir.

Q. You don't know that?

A. No.

Q. Now, Mr. Robertson spoke about the representative destinations being selected by a committee or a group of representatives of the various carriers. Were you one of the group that selected these representative destinations?

A. Yes, sir.

Q. In what sense, Mr. Hamilton, are these destinations representative?

A. Well, they are representative because they are in the same general territory.

Q. They use substantial quantities of coal, most of them?

A. Most of them.

[fol. 128] Q. And represent the general level of rates from the southern Illinois field for the distances involved—is that another factor of their being representative?

A. Well, they are representative because most of them have been passed upon by the Commission.

Q. Are they representative of the rate adjustment as between the Illinois groups?

A. I think they are, yes.

Q. Are they representative of the rate adjustment as between the Indiana groups?

A. Well, I have my own views about the adjustment between the Indiana groups.

Q. So they would not be representative of that?

A. Not entirely.

Q. And would you think they were representative of the general adjustment that exists between the Indiana groups, on the one hand, and the Illinois groups, on the other?

Exam. Trezise: From a rate standpoint?

Mr. Wilkinson: Yes.

The Witness: I think they are representative as to the territory to which the rates from Illinois and Indiana apply, and that they should be on a relative basis.

By Mr. Wilkinson:

Q. They are not representative as they stand today in their rates on the relationship that existed between the Indiana groups and the Illinois groups prior to the reduc-
[fol. 129] tions in Illinois in 1930, are they?

Mr. Zoll: I don't think I quite understand that.

Mr. Wilkinson: Will you read the question, Miss Reporter?

Mr. Zoll: I heard the question. I don't have to have it read. If the witness understands it, he may answer it.

The Witness: I understand from your question, did the reductions from Illinois by reason of the orders that have been referred to change a relationship that previously existed?

Mr. Wilkinson: Yes.

The Witness: Naturally, when Illinois went down and Indiana did not, it changed it.

By Mr. Wilkinson:

Q. So that they don't represent the relationship that existed prior to those orders of the Illinois Commission?

A. No; it represents the relationship that existed since that time.

Q. Now, in Exhibit No. 2 you show destinations in southern Wisconsin, some in Illinois and some in Iowa, and those were referred to as comparable destinations or comparative destinations. Now, are they comparable to the destinations within the involved territory with respect to distance of haul?

A. Well, from the same origin points, because they are slightly beyond the territory that is involved here, the distances are a little bit longer.

[fol. 130] Q. Now, are they comparable as between the Illinois groups with respect to the relationship in the rates with the representative destinations within the involved area?

A. They are not in all cases.

Q. Will you point out an instance where as between the Springfield group, on the one hand, for example, and the southern Illinois group, on the other, the differential of

Springfield under southern Illinois is other than 30 cents per ton?

A. Well, I would have to sit down and check the tariffs to tell you that.

Q. Well, how do you know then that they are not comparable in their rate relationship in all instances?

A. I understood your question to mean, is there the same difference from all groups to all of these destination points.

Q. Well, I am talking about the groups in Illinois in the general rate adjustment. Now, we will take first southern Illinois and Springfield. So far as you know, at all the representative points and at all the comparative points the differential is 30 cents Springfield under southern Illinois, is it not?

A. I wouldn't say that without——

Q. Without checking the tariff?

A. Yes.

Q. And you couldn't say as to southern Illinois and Belleville to these points without checking the tariffs?

[fol. 131] A. No, sir. The differentials are not the same to all of the territory. They are different in Iowa.

Q. As between what particular groups in Illinois do they differ into Iowa?

A. Well, between southern Illinois and Belleville, for example, or Du Quoin.

Q. Is that true at any point other than Dubuque?

A. Yes. They are not the same in Chicago as they are to some of these other points.

Q. I was asking you then about Iowa and the ones in southern Wisconsin, northwestern Illinois, and northeastern Iowa, that you have shown as comparative points. Now, so far as you know, is there any difference in the relationship between southern Illinois and Belleville to any of these representative points shown in Wisconsin, northwestern Illinois, or Iowa, except Dubuque, Iowa?

A. Yes, there is a difference in the relationship.

Q. At which one of the comparative points does it differ?

A. Well, I would have to take the tariff and check it. I know they are not the same to all of this territory.

Q. Is it not a fact that to the comparative points shown in southern Wisconsin that the relationship between the Indiana groups, on the one hand, and the southern Illinois groups, on the other, is constant at all those points?

A. I think it is not constant.

[fol. 132] Q. You have studied these exhibits that were introduced by Mr. Robertson yesterday. Are you familiar with the rates set out in those exhibits?

A. Well, I couldn't say that I am familiar with all the rates that were in there.

Q. You have used in these exhibits, or in certain sections of these exhibits filed by Mr. Robertson, comparisons of the rates to the representative points and comparisons with the rates to the comparative points and measured those by percentages of the Holmes & Hallowell Scale. Do you believe that such a measurement of rates indicates the relative level of the rates compared?

A. Yes.

Q. That is, if the rate, for example, to Rockford was shown to be say 60 per cent of the Holmes & Hallowell Scale and the rate to Janesville was shown to be 70 per cent of that scale, you would arrive at the conclusion that the rate to Rockford was on a lower level than the rate to Janesville?

A. Yes.

Q. And you would arrive at the same conclusion if you were comparing the rate to Amboy and the rate to Janesville, if Amboy was 60 per cent of the Holmes & Hallowell Scale and Janesville 70 per cent, is that correct?

A. Yes.

Q. Now, suppose that in comparing the rate to Dixon with [fol. 133] the rate to Madison, you found the rate to Dixon, we will say, 64 per cent of the scale and the rate to Madison to be 66 per cent of the scale, would you conclude that the rate to Dixon was on a lower level than the rate to Madison? I don't know if those are the true comparisons, Mr. Hamilton. I am just assuming a slight difference in the percentages.

A. Well, of course, these scales, as you know, cover a group. I would say, yes, if it is a lower percentage, it is relatively lower.

Q. But it could be within 1 per cent either way or 2 per cent either way without showing a maladjustment of rates, in your opinion?

A. Yes. I don't think that it is possible, where you have a group adjustment of rates, to get them on the same relative percentage of any scale.

Q. But when it gets up to a split of 5 to 10 per cent, why, that would show there was something, a maladjustment of the rates, is that it?

A. Well, in this case, we are trying to publish rates to this territory that are on a normal basis, and it is impossible in any group adjustment to get the rates all on a uniform scale.

Q. Yes, I understood that. Now, what I wanted to know was your opinion in the use of these scales, as to whether or not a different measuring on the H. & H. scale, percent- [fol. 134] ages of 5, 6, 7, 8 per cent difference, would that in your mind indicate a maladjustment of the rates? I had previously understood that a variation of 1 or 2 per cent would not.

A. In my opinion, it would show that the proposed rates were not unreasonable if they were within a percentage of the points to which they were compared.

Q. What percentage? I am trying to get your mean and extreme of percentages that would in your mind indicate substantially the same level.

A. Well, I couldn't pin myself down to a figure on that.

Q. Now, you said that it was necessary to change these rates because of the Commission's order in the Beloit case. At the present time the rates from some of the Indiana groups are less than 30 cents per ton over the rates to Rockford—that is, the rates to Beloit are less than 30 cents per ton over the rates from the same mine to Rockford, are they not?

A. Yes, I believe they are.

Q. Now, why, Mr. Hamilton, in complying with the order of the Commission several years ago the carriers thought it proper to determine the rate to Rockford from southern Illinois and apply the standard differentials from all the other groups to Beloit, and at this time in complying with that order you think it is necessary to change the rates from the Indiana groups to Beloit so that they are exactly 15 cents over Rockford? What has happened since your com- [fol. 135] pliance in the previous decision?

. . . . . .

[fol. 136] The Witness: The reason we proposed to make the same increases was to continue the present relationship we had there.

By Mr. Wilkinson:

Q. The present relationship you had where, at Rockford or at Beloit?

A. At Rockford.

Q. Why is the relation at Rockford more desirable to continue than the relation that existed at Beloit?

A. Because of the record in the previous 13th Section case, 23130.

Q. You had that before you when you fixed the rates at Beloit, as the result of the decision in the 1st Beloit case, did you not, the Fairbanks-Morse case?

A. Yes.

Q. Is it not a fact that the relationship as between the Indiana groups that now exists at Beloit is the same relationship that exists throughout Wisconsin, Iowa, Southeastern Minnesota, as between the Indiana groups and southern Illinois, Springfield?

[fol. 137] A. I don't think it is, no, sir.

Q. Is the relationship between the Indiana groups, on the one hand, and the Illinois groups, southern Illinois, Springfield, different at Beloit than it is at Janesville?

A. I would have to check the rates to answer that.

Mr. Wilkinson: That is all, Mr. Hamilton.

Exam. Trezise: Along that line, Mr. Hamilton, you stated something about the differentials being different to your representative destinations. That is the relationship or differential between the origin groups in Illinois, for example, southern Illinois over the Fulton-Peoria group. What kind of sense or nonsense is there in a rate adjustment that has a 60 cent differential to Rockford, 80 cents to Beloit, 79 cents to Janesville, 67 cents to Fort Atkinson, and 70 cents to Lake Mills.

* * * * * * * *

[fol. 138] The Witness: Of course, it is not a very consistent adjustment.

Exam. Trezise: Then it is an inconsistent adjustment, is that it?

The Witness: Yes.

Exam. Trezise: Isn't it a fact the differentials for the nearby points are very frequently higher than to the farther distant points?

The Witness: Yes, that is a fact.

Exam. Trezise: And you have just the opposite situation [fols. 139-140] here, do you not? In other words, the differential is lower as between southern Illinois and Fulton-Peoria to Rockford and Beloit, than it is, well, clear up to Lake Mills.

The Witness: Well, I would like to say that to the shorter haul points the level of the rates from the short distances *are* usually somewhat higher than they are from the longer distances, and in that respect it would have a tendency to have the lower differential to the short haul points than to the longer haul points.

Exam. Trezise: Well, you know, or do you, that this 70 cent differential has quite a wide application, southern Illinois over Fulton-Peoria, so far as this destination territory is concerned in the northwest?

The Witness: Yes, it has.

Exam. Trezise: Perhaps that is the predominating differential, isn't it? That is, I mean there are more 70 cent differentials to more points than there are any other particular differentials.

The Witness: There seem to be up in Wisconsin. There is 60 cents and 50 cents differentials out in Iowa.

Exam. Trezise: Well, I didn't mean to go to a state where the Commission had undertaken to tamper with the differentials. That is all.

Mr. Vesey: I have some questions I would like to ask.

Exam. Trezise: Go ahead, Mr. Vesey.

. . . . . .

[fol. 141] By Mr. Vesey:

Q. Mr. Hamilton, as I understand it, it is your contention here that the level of rates which prevails in the northern Illinois destinations differs from the level of rates that prevails in southern Wisconsin, is that correct?

A. That is part of it.

Q. I mean, that is one of your contentions, isn't it?

A. There is no contention. That is one of the reasons that I gave for our proposed increase in the rates.

Q. And because of that reason or contention, put it either way, the carriers have suggested increased rates to the northern Illinois destinations, have they not, which rates are under suspension here in this proceeding?

A. They have, because of the order of the Interstate Commerce Commission that requires some adjustment in the rates as between Rockford and Beloit.

Q. And in determining the propriety of the rates which are under suspension here, which you are asking to go into effect, you have used the level of rates in southern Wisconsin as a basis for that request, have you not?

A. I have used the level of rates into Wisconsin which have been fixed by the Interstate Commerce Commission to show that the rates which we have proposed are not unreasonably high.

[fol. 142] Q. Is it your contention here in this proceeding that the level of rates which prevails in the southern Wisconsin territory, in the compared territory that is involved here, to the destinations, that that is a proper and reasonable level of rates which prevails in that territory?

A. I made no such contention. I have referred to the rates in Wisconsin that are approved by the Commission as being not unreasonable and, therefore, the rates which we have proposed, which are not as high as those rates, cannot be considered unreasonable.

Q. Then, in your opinion, is the level of rates which prevails in the southern Wisconsin territory a reasonable level of rates from the carriers' point of view?

A. So far as the carriers are concerned, they have to be governed by what the Commission tells us.

Q. I asked you your opinion. In your opinion, is it a reasonable level of rates?

A. Well, yes. I can't say that they are unreasonable.

Q. Certainly, and that is why you picked these destinations out as representing an overall characterization of that level of rates in the southern Wisconsin territory, isn't that right?

A. We picked them out because they have been passed on by the Commission, to show they were approved rates. That is the reason we picked them.

[fol. 143] Q. And the only reason these destinations are used is because they typify that level of rates in the southern Wisconsin territory, isn't that correct?

A. Well, I think I have made myself clear, that we took them because they have been passed upon by the Commission as being reasonable rates and, therefore, by comparison with the rates that we had proposed, which were a slightly

lower level than that, that these rates could not be considered unreasonable.

Q. In other words, you took it because you felt safe in taking that level, is that right?

Mr. Zoll: I object to the question, Mr. Examiner.

Exam. Trezise: Is that all?

Mr. Vesey: No, I have a question pending, that isn't answered.

Exam. Trezise: I thought you were satisfied with his other answer and you didn't want this one answered.

Mr. Vesey: No. I thought I had a question pending. At least I assume that I have.

Mr. Zoll: And I objected to it.

Exam. Trezise: You object to the question?

Mr. Zoll: Yes, sir.

Exam. Trezise: May we have the question read?

Mr. Vesey: To save time, let me go ahead.

By Mr. Vesey:

Q. In other words, from your point of view, Mr. Hamilton, the level of rates from the various origin groups in the [fol. 144] compared territory, in your opinion, is a reasonable fair level of rates to all parties concerned, isn't that right?

A. Well, the question involved here is not one of readjusting rates to put them on any particular level. The question here before us is that we must comply with an order of the Commission, and we have to do it in one of two ways, and we have explained why we proposed the rates we did. We have shown that those rates proposed are not higher than the level of rates that have been passed on by the Commission to points in that general territory.

Q. Now, Mr. Hamilton, you know that isn't an answer to my question, don't you?

A. No, sir, I do not. I think it answers your question.

. . . . . .

[fol. 145] Exam. Trezise: Let us get down to the point the witness already made. He said he thought it was a reasonable basis that you propose, is that right?

The Witness: Yes, sir.

Exam. Trezise: Now, how about this fair, proper and equitable, and all that? Did you say that?

The Witness: No, sir.

Exam. Trezise: Well, all right. Now we have divided the question. Now you can ask him about the fair and equitable. I don't know how far that will carry us.

By Mr. Vesey:

Q. I take it from that answer, then, Mr. Hamilton, that there are rates applying from certain of the origin groups [fol. 146] to the compared territory which in your opinion are not a reasonable fair level in view of the other rates prevailing from other origin groups to that territory, is that correct?

Mr. Kaier: All he said was that he was not answering that question.

Mr. Vesey: I didn't say he was.

Mr. Kaier: Yes, but now you are putting something different in his mouth.

Exam. Trezise: He has added fair and equitable now to his question. Do you want to go along with him on that?

The Witness: I think the Commission is the one that has to pass on whether they are equitable.

Mr. Vesey: Mr. Hamilton, I am not interested in what the Commission has got to do. I am asking for your opinion.

Mr. Zoll: I submit our opinion doesn't have anything to do with that, because the Commission has said it is reasonable. If you want my opinion, I think they could be a lot higher.

Exam. Trezise: Well, let us get the answer from the witness. Have you anything to say with respect to the fair and equitable nature of your proposal, or with respect to these rates or any other rates that you can think of, and what do you know about it? Now, he wants you to tell him.

The Witness: Well, I think the proposed rates are fair.

By Mr. Vesey:

Q. You mean to the compared territory, are you speaking [fol. 147] about, or the proposed rates as proposed by the carriers in this proceeding, which?

Mr. Cardy: Mr. Hamilton, that doesn't include rates from northern Illinois; you said you would not testify anything about the rates to northern Illinois, and your answer doesn't deal with the northern Illinois situation, is that true? The

Examiner split the question, and I want it split, if possible.

Mr. Biaett: He was asked the question, from all groups. I think the two protestant counsel should get together if they want the question split up on it.

Exam. Trezise: Let us see how far we have gotten now. He said he thought it was fair.

Mr. Vesey: I had a question pending along here somewheres and I think it got lost. Will you read my last question, Miss Reporter.

(Question read.)

The Witness: Well, my remarks about the level of the rates was to the suspended rates.

By Mr. Vesey:

Q. Now, I asked you about the rates to the compared destinations, as to whether or not you thought those rates were reasonable and proper rates.

Mr. Kaier: Mr. Examiner, hasn't he said half a dozen times that the Commission has fixed them as reasonable, and shouldn't that end it?

[fol. 148] Mr. Vesey: Well, off the record, to save time——

Exam. Trezise: Off the record.

(Discussion outside the record.)

Exam. Trezise: Perhaps the Examiner can help you or confuse you. I don't know which. Mr. Hamilton, you said the reason you selected these rates that you have characterized as reasonable here, was it because these points just over the line into Wisconsin are in the same general rate territory? Could that have been one of the reasons?

The Witness: That was one of the reasons, yes, sir.

Exam. Trezise: You said that was not your only reason. I was just wondering whether you were advocating a different basis of rates at that state line up there for some reason and if you had any reason for it, tell us why.

The Witness: No, I was not advocating any different basis of rates. We selected those points because they were in that same general territory, surrounding the territory involved, and because the rates had, most of them, been passed on by the Interstate Commerce Commission and approved as not unreasonable and, therefore, we thought it was a fair comparison to show that to the territory where we

were proposing the increases that they were not on any higher level than the rates to these points where the Interstate Commerce Commission had already approved rates as being not unreasonable.

[fol. 149] Exam. Trezise: Well now, Janesville and Beloit and Rockford, are they all in what you call the Illinois Freight Association territory?

The Witness: Yes, sir.

Mr. Morgan: What association is that, Mr. Examiner?

Mr. Zoll: Illinois Freight Association.

Exam. Trezise: Now, Mr. Vesey, go ahead.

Mr. Vesey: I would like to see if the witness and I can't get on the same basis as we started from at the beginning of my cross examination.

By Mr. Vesey:

Q. Now, as I understand, Mr. Hamilton, from your last answer, it is your opinion that the same rate level should apply in the affected territory as in the compared territory, is that correct?

A. That isn't what I said.

Q. I say, is that your opinion?

A. Well, I don't think that I can put it down in a few words, that they ought to be exactly on the same level.

Q. In other words, you wouldn't say they ought to be exactly on the same level. You would make a differentiation, would you?

Exam. Trezise: Did you show these representative points for the purpose of showing that they should take the same level as the other rates in this compared territory, or did you show these representative points in order to give the [fol. 150] Commission a guide as to the measure of a reasonable interstate rate by which the intrastate rate might be measured?

The Witness: The second question, the answer to that is, yes; not to the first one.

Exam. Trezise: We will rely on the second question and answer then.

By Mr. Vesey:

Q. Then, Mr. Hamilton, let us approach it from another angle. You are familiar with the rates from southern Illi-

nois groups to both the affected territory and compared territory, are you not?

A. Yes.

Q. And the proposed rates to the affected territory are on a lower level from southern Illinois, than the existing rates to the compared territory, are they not?

A. They are.

Q. Is it your opinion that the proposed rates by the carriers to the affected territory, if permitted to go into effect, would constitute a reasonable fair level of rates to that territory?

A. As I have previously stated, we are not attempting to put the rates on a special level. We are trying to comply with an order of the Commission and to do so——

Mr. Vesey: Just a minute. Mr. Examiner, I am going to insist on answers to my questions. I have asked a simple question here and I would like to get a simple direct answer [fol. 151] to it. Now, it seems to me, in the interest of keeping an orderly record, I am entitled to that.

Exam. Trezise: Do you think now, Mr. Hamilton, that the rate that you propose to Rockford from the Illinois groups, we will say, does represent what is a reasonable rate, and in your mind is the measure of a reasonable rate?

The Witness: Yes, sir.

By Mr. Vesey:

Q. And is that also true to the other destinations in the affected territory, besides Rockford?

A. Is your question to the effect that the rates that we have proposed are reasonable rates?

Q. That is right, yes.

A. Yes.

Q. Now then, if those rates result in a lower level of rates to the affected territory than exist at the present time to the compared territory in southern Wisconsin, is the relationship that would then result between those two levels a proper relationship, let us say in so far as the movement of coal from southern Illinois to those two territories is concerned?

A. It is not for me to say whether that is a proper relationship.

Q. I am asking——

A. Just a minute. I am only answering you. If you want to ask a question, let me answer it.

Q. I am asking only for your opinion, Mr. Hamilton, and [fol. 152] for nothing else.

Exam. Trezise: Have you given your answer?

The Witness: No, sir, he didn't let me.

Exam. Trezise: Well, you are entitled to give your answer and complete your answer. Have you completed it?

The Witness: No, sir.

Exam. Trezise: Well then, complete your answer.

The Witness: All right. May I ask if he wants yes or no?

Exam. Trezise: He didn't ask you that. That is a different question.

The Witness: I haven't answered it yes or no. Would you read that question back, please.

(Question read.)

The Witness: The question of a relationship is not what we are trying to adjust here at this time. The rates are, in my opinion, reasonable, and they are not higher than they are to the territory beyond. The proposed rates do not bring them up to the same level as the rates to the Wisconsin territory.

Mr. Vesey: In other words, your answer is, yes.

Mr. Biaett: No, the answer is not "yes" as he stated it.

Mr. Vesey: Now, just a minute, Mr. Biaett.

Exam. Trezise: Now, the Examiner believes the answer would be "yes" if what he said is true, is that right, and [fol. 153] you said it wasn't so, as the Examiner understood it. You said the level of rates to these compared points was not lower than the rates to this affected territory. That is what you said.

The Witness: Yes, sir, I said that.

By Mr. Vesey:

Q. You mean by that answer, Mr. Hamilton, to say that the level of the rates which would result in the putting into effect of your proposed rates to this affected territory would not result in a lower level of rates than those that now apply to the southern Wisconsin compared territory?

A. No, that was not the answer at all. You got that just turned around.

Q. Now then, get back to my question. Assuming your proposed rates go into effect and it does result in a lower level of rates to the northern Illinois territory as compared with the southern Wisconsin territory, are those two levels compatible and a proper relationship, than exist in so far as the movement of coal say from southern Illinois is concerned to those two territories, in your opinion?

A. Well, I have answered that already. The rates today are on a lower level. The proposed rates would still be on a lower level. And we are not trying to adjust the rates into this territory. W are simply trying to comply with the order of the Commission.

[fol. 154] Q. All right, put it your way. Would that result in a proper relationship of the rates between the two territories, in your opinion?

Mr. Zoll: Mr. Vesey, I want to help you. Can you put that in the negative?

Mr. Vesey: No, I would rather get an answer to it this way.

The Witness: All right, I will answer it. I will say they could still be higher.

By Mr. Vesey:

Q. You mean they should be higher?

Mr. Zoll: He said "could".

Mr. Vesey: I know that. Should they be higher?

Mr. Biaett: I don't think that question is involved in the proceeding. He said they could be higher and still be on a lower level than the rates into the compared territory. The fact that they should be or shouldn't be is not in issue. We have only raised them up so far. If we might be able to raise them higher and prove to the Commission that they should be higher, why, that is an issue that would come up in that proceeding, if it ever came up.

Exam. Trezise: Well, Mr. Biaett, I think there possibly the Commission could be guided by some of this expert testimony in determining whether the level of the rates in Illinois should be relatively lower than the level of interstate rates. So the testimony of the nature of the question asked [fol. 155] might help the Commission.

Mr. Biaett: I was not under the impression that that question had been asked, Mr. Examiner.

Exam. Trezise: Well, are you satisfied to let any question that may be pending answered now on the theory that the Examiner has asked this particular? Do you know of any reason, Mr. Hamilton, why the level of rates, if it is or isn't, one way or the other, higher or lower in the State of Illinois, should be different from the level of rates on the interstate traffic to points just over the state line into Wisconsin? Do you know of any reason, I ask you?

The Witness: No, sir, I do not.

By Mr. Vesey:

Q. In other words, then, Mr. Hamilton, the mere existence of a state line should have nothing to do in so far as determining a proper rate base for determining rate levels from any origin group to a given territory, isn't that your answer?

A. My answer is that, in my opinion, the fact that the state line is between those points does not affect what would be a proper level of rates to points both north and south of that line.

Q. Certainly. Now, in this given case, your proposed rates result in a given level to the northern Illinois territory, and your existing rates result in another level to the southern Wisconsin territory, isn't that true?

[fol. 156] A. That is right.

Q. Now, I am asking you, looking at those two levels, would you say that in the territory, taking in that whole group, the affected and the compared, that that would result in a proper relationship of rates between the destinations in the compared territory and the destinations in the northern Illinois territory?

A. Well, I will not say as to the proper relationship. We could still increase those rates and they would then be less than the rates in Wisconsin. We are not trying to make a readjustment.

Exam. Trezise: Well, you think then that the Commission might well have said that the relationship between Rockford and Beloit could have been less than 15 cents, that is that you are saying?

The Witness: No, sir.

Exam. Trezise: Well then, you think that the Commission was right, then, in the 15 cents—or, you don't need to answer that.

Mr. Biaett: Mr. Examiner, I think in line with the issues in this proceeding, the witness might be permitted to state the question and the answer in the negative, that is, that this would not be an improper relationship. When you pin him down to a proper relationship, that isn't particularly involved. If these rates might reasonably be [fol. 157] higher, and he stated that they can, he might put it that way and satisfy Mr. Vesey, by saying it would not be improper.

Mr. Vesey: I think we got my first proposition established. Now I will go to yours, if you want me to.

By Mr. Vesey:

Q. Mr. Hamilton, would the level of rates that would then result in the affected territory, which is the northern Illinois territory, and the compared territory in southern Wisconsin, from these proposals, result in levels which are not improperly related one to the other?

Mr. Zoll: You mean not improperly?

Mr. Vesey: That is his own wording. I don't know whether he wants the question or not, but I am asking it.

Exam. Trezise: Do you have an answer to that, Mr. Hamilton?

The Witness: Oh, I am sorry. I will have to ask you to read that question again.

Exam. Trezise: Well, the Examiner thinks what Mr. Vesey means is that this adjustment proposed is some place within the realm of propriety, either at the top or the bottom of it somewhere.

Mr. Vesey: That is right.

Exam. Trezise: You don't need to put your finger on it exactly as being here or there, but there is a zone of propriety and it may be at the top of it or it may be at the bottom of it or it may be in the middle, but whatever it [fol. 158] is, it still can be characterized as proper.

Mr. Vesey: I put it that broadly, if the Examiner please, so I wouldn't be too specific.

Exam. Trezise: You don't want to go that far, Mr. Vesey?

Mr. Vesey: I am going that far.

The Witness: I think that the adjustment that is proposed is proper.

By Mr. Vesey:

Q. You think the adjustment that is proposed is proper, is that right?

Mr. Kaier: Of course, the Examiner has just defined "proper".

Mr. Vesey: I see. All right, you think it is proper?

The Witness: Yes.

Exam. Trezise: Within the definition of "proper" as given by the Examiner.

I think we are working the little lady too hard here. Let us take a recess.

(A short recess was taken.)

Exam. Trezise: All right, Mr. Vesey:

By Mr. Vesey:

Q. Now, as I understand it, Mr. Hamilton, in arriving at the proposed rates there was a certain committee that functioned and among the membership of that committee was yourself, is that correct?

A. Yes, sir.

Q. And who were the other members of that committee? [fol. 159] A. The Committee as a whole was the membership of the Illinois-Indiana Coal and Coke Committee.

Q. You mean by that, a representative of each of the roads was represented in that committee meeting?

A. Yes, sir.

Q. Can you tell us whether or not the view which you just expressed to the Examiner before the recess with respect to the propriety of the proposed rates which are now under suspension to this affected territory is shared by the other members of that committee?

A. Yes, sir, the propriety of the rates that we proposed was approved by that committee.

Q. So that when you say these rates are proper in your opinion, that would mean they are proper in the view of the other members of that committee?

A. I am not putting them in the shape that they are proper. What I said was that these rates, the present rates are lower than they are to the territory beyond, and were required by the Commission to make an adjustment in the rates to Beloit, Wisconsin, and the rates which we have proposed, which are now under suspension, are still on a

lower basis than the rates into southern Wisconsin, and therefore, they are not improper, they are not unreasonable, and they are not improper.

Q. In other words, they are as good rates as your commit-[fol. 160] tee could propose in view of all the circumstances involved?

A. That is the idea.

Q. And you know of no reason at the present time for considering those rates in any way improper, do you?

A. Well, I have previously stated that we are not trying to readjust rates at this time. We are simply trying to comply with the order of the Commission involving the Beloit rates. There are adjustments that we might make if we thought it was a proper time to do so.

Q. Well, you don't mean by that answer, do you, Mr. Hamilton, to say that you think that any of the rates which you have proposed to the affected territory are improper rates?

A. No, sir. I do not think they are improper rates.

Q. And so far as you know, they are proper rates, isn't that right?

Mr. Blaett: Mr. Examiner, don't you think we have had enough argument over proper and improper in one day's work in a proceeding? The witness stated his position very clearly.

Mr. Vesey: I don't see any objection to getting that answer.

Mr. Blaett: He stated his position. I don't know why that doesn't satisfy you.

Exam. Trezise: Well, you state they are proper rates. Now, let us drop that. That is the same definition as the Examiner gave. Will you accept that?

[fols. 161-162] Mr. Vesey: I will accept that.

Mr. Kaier: Well, he has answered that.

Exam. Trezise: You have answered that the rates to this affected territory are proper. Did you say that, or do you want to modify any answer that you have made before? I think you have answered it three times.

The Witness: I answered your question, that I considered them proper.

By Mr. Vesey:

Q. Well now, just so I am straight—I don't know whether there is a technicality involved in that or not—but just in the common, ordinary use of the word "proper" in the English language, are the rates which you propose to this affected territory proper rates, in your opinion?

. . . . . .

[fol. 163] Exam. Trezise: Is there any other answer that you want to give, or qualify the "proper" that you have already answered, that the rates were proper?

The Witness: No, sir.

Exam. Trezise: He has no other one. All right. Let us take up something besides the propriety of those rates.

By Mr. Vesey:

Q. Now, I notice in your testimony, Mr. Hamilton, that the scale that you referred to for the purposes of your [fol. 164] rate comparisons was the Holmes & Hallowell Scale. Did you make any computations to determine levels under any other scales, as, for example, Midland Electric Scale or the scales in Docket 23922?

A. No, sir, I did not.

Q. Your studies were all confined to the use of the Holmes & Hallowell Scale?

A. That is right.

Q. In your further deliberations with your committee, did you give any consideration to the possibility that the rates which you are now proposing might result in diverting coal shipments from one origin group to another?

Mr. Zoll: You mean between the origin groups in this territory? You don't have in mind the eastern field?

Mr. Vesey: No, just the origin groups involved here.

Mr. Zoll: Yes.

The Witness: There wasn't any special discussion on that subject.

By Mr. Vesey:

Q. Are we to assume that your testimony then with respect to revenue losses is predicated upon the assumption

that the same tonnages would continue to move from the same origin groups as in the base periods that you use?

A. Approximately.

Exam. Trezise: Well, did you change the relationship of rates?

[fol. 165] The Witness: No, sir.

By Mr. Vesey:

Q. In your opinion as an expert, Mr. Hamilton, do you have any reason to believe that the changing in the levels as proposed in your proposed rates would result in a shifting of tonnages from one origin group to another?

A. No. I know of no reason why it should. Of course, from year to year tonnage does shift from one group to another, because some operator goes out and gets a contract that somebody else had the year before. But so far as the proposed rates are concerned, I don't consider that they would cause that.

Q. You know, do you not, that there is very keen competition between coal producers in the several origin groups in Indiana and Illinois, in the sale of their coals in the territory, into the affected territory and the compared territory, do you not?

A. Yes.

Q. Do you know what is the breaking point ordinarily, in so far as price per ton is concerned, which causes a shift, buyers preferring one coal, that is, from one origin group as against the coal from another origin group?

Mr. Biaett: I object to that question, Mr. Examiner. The quality of coal or the price regulation has no part in these proceedings. We are merely talking about the level of the rates and whether the level of the rates discriminates [fol. 166] against interstate commerce.

Mr. Vesey: I concede that. I think everybody does, Mr. Biaett. This question is very simple and direct. When you change your rates, you change the delivered price, naturally, of coal. Now, let us find out whether he gave any consideration in the statement he made in his direct testimony, that there would not be any diversion from one origin group to another.

Exam. Trezise: I will let him answer that question, but don't pursue it too far, please.

The Witness: No, I couldn't tell you just what the breaking point is, as to whether an operator in one district would take business away from an operator in another district.

By Mr. Vesey:

Q. And your committee didn't give any consideration to that particular aspect of the problem involved, did they?

A. We are not selling coal. We have to comply with an order of the Commission.

Q. I say, You didn't give any consideration to that aspect of the problem involved?

Exam. Trezise: He said he didn't; isn't that right?

The Witness: That is right, I said I didn't.

By Mr. Vesey:

Q. You spoke of an investigation which was made under your direction with respect to determining the effect of the increased rates in so far as the competition between coal [fol. 167] and gas and fuel oil is concerned. Will you please tell me when that investigation was made?

A. Within the last month.

Q. And who made it?

A. One of our representatives.

Q. And his name is what?

A. Well, the investigation was not confined alone to one party.

Q. All right, give the names of the parties, please.

Mr. Zoll: Might I ask the purpose of that question?

Mr. Vesey: Yes. So that I may understand the direct testimony that you put in with respect to competition between gas and fuel oil and coal.

Mr. Zoll: Their names don't help you to understand that testimony, you know that.

Mr. Vesey: Now, if the Examiner please, just a moment; the direct testimony is in here. He says an investigation was made. He said first it was made by one representative. Now he said it is more than one. Let us have the names of the parties.

Mr. Zoll: I object to the question because I don't see how their names, whether Smith or Jones, could help that testimony or help you understand that testimony.

Mr. Vesey: I may want to call Smith or Jones.

Exam. Trezise: Let us start here. These are the men, as the Examiner understands it, who were working under your [fol. 168] direction. That is correct, Mr. Vesey?

Mr. Vesey: That is right.

Exam. Trezise: Now, Mr. Vesey would like to know whether his name is Tom, Dick or Harry. Now, I think he has a right to ask that question and he can call those men in if he wants to. Now, do you know the names of these men?

The Witness: Yes, sir, I know the names.

By Mr. Vesey:

Q. All right, what are they?
A. One of them is Dewey Woolin.
Q. How do you spell that?
A. W-o-o-l-i-n. The other one is Richmond.
Q. His first name, please?
A. For the moment——

Mr. Zoll: L. E.
The Witness: L. E. Richmond.

By Mr. Vesey:

Q. Were there any others?
A. No.
Q. When did you give them their directions with respect to this investigation which was made under your supervision and direction?

Mr. Zoll: Right there I want to avoid the impression being created that Mr. Hamilton's testimony springs entirely from the investigation of two men. He testified that his knowledge and his testimony on the subject came from his years of experience on the railroad. He testified that he [fol. 169] has men in all territories. A railroad is a big organization and you can't confine the work to one or two men.

Exam. Trezise: All right. He has asked about these two men. The evidence is pretty clear on it.

Mr. Vesey: Why, yes. I don't think there is any question about it.

Exam. Trezise: All right, proceed.

By Mr. Vesey:

Q. Now, when did you give your directions with respect to the investigation that was made?

A. Well, I don't remember the exact date that I handled it with them.

Q. You mean that was approximately a month ago, as you said a moment ago?

A. Yes, it was within the last month, about a month, within the last month.

Q. In other words, some time on or about the 18th day of February?

A. Well, I won't set a time.

Q. I mean some time?

A. I said I had it up within about a month.

Q. Now, what were your directions to those two investigators?

A. To determine whether or not natural gas was available in this territory.

Q. Yes. What else?

A. To what extent it was being used.

[fol. 170] Q. Yes; any other directions?

A. Those were the principal directions I gave them.

Q. Now, they reported back to you, I take it?

A. They did.

Q. When did they report back?

Mr. Zoll: Between that time and the present time.

Mr. Vesey: Now, just a minute, counsel. We have a witness on the stand here. I don't think the witness needs prompting.

The Witness: Well, I can't give you the exact date.

By Mr. Vesey:

Q. Well, approximately when?

A. Within the last 30 days.

Q. You mean they reported to you before you gave your directions or after?

A. Well, afterwards. They couldn't very well report before I asked them about it.

Mr. Vesey: It would seem to me that.

Mr. Kaier: You don't understand, Al, Mr. Vesey comes from Washington.

Mr. Vesey: I take it that that remark is made to put me in the same category as the Examiner.

Exam. Trezise: Let us not discuss it. Ask the man the questions. We will have to start and be a little more strict about this promiscuous speaking. You are not supposed to talk to each other anyway.

[fol. 171] Mr. Vesey: I was just trying to find out the purpose of the remark.

By Mr. Vesey:

Q. Now, Mr. Hamilton, when did they report back to you, these two investigators?

A. I said I couldn't give you the exact date. It was within the last 30 days.

Q. Was that a written report?

A. Part of it was written and part of it was oral.

Q. Do you have that written report available here?

A. No, it isn't available at present.

Q. Will you obtain it and produce it?

Mr. Zoll: No, I will object to producing it.

Exam. Trezise: You say you object?

Mr. Zoll: I will be glad to show it to Mr. Vesey.

Mr. Vesey That will suffice, if the Examiner please.

Exam. Trezise: The part that is going to be produced is the part that is written, not the oral part.

Mr. Vesey: If he will show it to me, so that I may have it before this witness is finally excused from the stand, that will suffice for the time.

Exam. Trezise: All right, proceed to the next question.

By Mr. Vesey:

Q. Now, was it on the basis of those written and oral reports that you made the statements, that you arrived at conclusions which served as a basis for your statements that appear on pages 15, 16 and 17 of your prepared state-
[fol. 172] ment?

A. Partially so, and partly on account of the experience we have had in competition of natural gas at other points on the line.

Q. Does your railroad, the Illinois Central, maintain at any destination so-called gas compelled rates?

A. Yes, sir.

Q. Why do you have gas compelled rates on your railroad, Mr. Hamilton, in view of the statements which were made on pages 15, 16 and 17 of your prepared statement?

A. Well, we put the rates in with the expectation that it was going to keep tonnage on the railroad, but our views as to the propriety of doing that have considerably changed since they were originally published, and they have not accomplished what we expected.

Q. In other words, your views at the time you put those rates in had changed from the views as expressed in your statement which you read here yesterday?

A. No, sir. Our views as to the result of putting in those rates have changed.

Q. You mean as to the expected results?

A. Yes.

Q. In other words, you didn't save as much coal tonnage as you thought you would, is that it?

A. Yes, sir.

[fol. 173] Q. But do you still adhere to your previous view that there was a necessity for the maintenance of those gas compelled rates?

A. I hadn't previously expressed any opinion as to the necessity of establishing the rates. I said we thought the establishment of the rates would result in continuing the tonnage to the railroads, but it did not accomplish what we thought it would.

Q. But those rates are maintained, are they not, because of the competition of coal as against gas, isn't that right?

A. They are still maintained—when you once get a low rate in, it is a very difficult matter, as indicated in this hearing, to ever get it increased.

Q. In other words, I take it now, your opinion is that there is no necessity of maintaining a gas compelled rate into any territory, is that right?

A. There might be some exception, but generally speaking, that is correct.

Q. And that is the point of view that you have tried to express in pages 15, 16 and 17?

A. Yes, I have tried to express the view that because of the experience we have had at other points, that a small increase in the freight rate is not going to be the determining factor in turning business from the railroads to the gas, natural gas lines.

[fol. 174] Q. In other words, to talk of competition between gas and coal is to talk of the unreal and the unrealistic, is that right?

A. I wouldn't put it just that way.

Q. How would you put it?

Mr. Zoll: He has already put it. I submit he has already answered that question.

Exam. Trezise: What is your answer, Mr. Hamilton? You would put it the way you put it before, and do you understand what that was, Mr. Vesey?

Mr. Vesey: Well, I think I do.

Exam. Trezise: Is that your answer?

The Witness: That is my answer, yes, sir.

By Mr. Vesey:

Q. I don't find it in your prepared statement here, although I have it marked, Mr. Hamilton, that is, that I believe in one place you pointed out that your present rates to certain points in the affected territory were maintained at that particular point because coal moving from southern Illinois moved through those towns, to destinations, on its way to Chicago, and because of the rate to Chicago it was necessary to maintain that particular rate at those destinations, is that right?

A. That is right.

Q. Do you recall that testimony?

A. Yes, I do.

Q. And those destinations were what?

[fol. 175] A. They were, I believe, DeKalb and Rochelle and several points on the North-Western Railroad between Nelson and Chicago.

Q. And as I understood your testimony there, your reason for not raising the rates at those particular points was because of the Chicago rate?

A. They were raised. They were raised 5 cents instead of being raised more than 5 cents.

Q. In that instance your comparison was with Chicago rather than with southern Wisconsin?

A. No, sir.

Q. It was not?

A. No, sir.

Q. What was it?

A. The comparison was with all of these points, and I have stated in my direct testimony that we didn't consider Chicago a proper point to use in measuring the level of the rates to this involved territory.

Q. Now, in measuring the level of rates to that territory out there, was it necessary that you use the particular route that you did from southern Illinois to Chicago, that is, I believe via the North Western?

A. Well, the North Western Railroad wants to handle some coal and that is their route.

Q. You felt it necessary to use that particular route and [fol. 176] use that as a means of holding those rates as you did in your proposal?

A. Yes, sir.

Mr. Vesey: That is all.

Exam. Trezise: Mr. Hamilton, when you spoke of the change in the flow of traffic, did you complete your understanding on that? Now, you say if the rates from all of these groups, Illinois, Indiana and Kentucky, were increased a certain amount, it might not change the flow of traffic. Well, coal comes from other places than these groups, does it not?

The Witness: Yes, it does, but the other groups that the coal comes from is eastern coal, which is a different kind of coal and the rates are higher, and I stated in there that I did not think it would result in diverting the business from Illinois, Indiana and western Kentucky to that eastern field.

By Mr. Vesey:

Q. Let me ask just one question in view of that answer. I take it, then, as far as you are concerned, Mr. Hamilton, you would rather maintain a low level of rates to the towns in question because of your rate to Chicago than you would raise that level to what you would term a proper level and take your chances with respect to diversion, is that right?

A. Well now, that question was so long that I didn't quite get it all. May I have it read?

[fol. 177] (Question read.)

The Witness: We are not trying to maintain a low level to these points. We are trying to increase the rates. And as I understand your question, do we think we should main-

tain the low level, as you call it, of the suspended rates to these points rather than increase the rates to Chicago?

By Mr. Vesey:

Q. You mean you don't understand the question?

A. That is the way I understand your question.

Q. All right, you answer it on that assumption first. Now, on the basis of that assumption, what is your answer?

A. Well, it would hardly be considered probable or proper to attempt to raise Chicago rates. We have explained before of the tonnage that is moving into Chicago and the competition from the various fields. So that we could hardly as a practical matter try to increase the rate to Chicago.

Mr. Vesey: That is all.

Exam. Trezise: All right, gentlemen. Let us adjourn until 2 o'clock.

(Witness excused.)

(At 12:30 o'clock P. M. recess taken to 2 o'clock P. M.)

[fols. 178-229] Afternoon Session

The hearing was resumed pursuant to recess.

2 o'clock P. M.

Exam. Trezise: All right, gentlemen, when you are ready we will proceed. Do you have some further questions, Mr. Vesey? I think you said you were through.

Mr. Vesey: I concluded.

Exam. Trezise: Do we have any further questions of Mr. Hamilton concerning his direct testimony?

. . . . . .

[fol. 230] Mr. Bather: I would like to ask Mr. Hamilton a few questions, Mr. Examiner.

Exam. Trezise: Mr. Bather.

By Mr. Bather:

Q. In your direct testimony, Mr. Hamilton, referring to the decisions of the Illinois Commerce Commission in the Rockford and Freeport coal cases, Dockets 13569 and

13558, effective August 20, 1930, the rate at that time was reduced generally 17 cents a ton, is that correct?

A. That is correct.

Q. Subsequent to that reduction, in ex parte 115, an increase of 10 cents per ton was made; and in ex parte 148, an additional increase of 5 cents per ton.

A. Yes, sir.

Q. That is correct?

A. That is correct.

Q. So that since 1930, the rates from Illinois producing points to Rockford, Freeport and generally in the territory [fol. 231] in northern Illinois have been restored to the extent of 15 cents per ton?

A. Not restored. The rates to those points, as well as all other points, have been increased by these general orders No. 115 and 148, and it does not make any readjustment as you intimate in the rates to Rockford and Freeport.

Q. But nevertheless you earned 15 cents per ton more than you did under the rates prescribed by the Illinois Commerce Commission, to which I referred?

A. Yes, and those increased rates have been approved by both Commissions.

Q. And they were opposed by the shippers generally, were they?

A. I think not.

Q. Now, in computing your comparisons in the rates from Illinois to Rockford, for example, with the Holmes & Hallowell scale you used the average short tariff routes as a basis for your distance, did you not?

A. That is correct.

Q. Now, are the rates under the Holmes & Hallowell scale based upon the shortest route from point of origin to destination?

A. My recollection is that that scale was based on using mileage of not exceeding more than three lines.

By Exam. Trezise:

Q. The shortest route?

A. Yes.

By Mr. Bather:

Q. Where you had physical connection between those [fol. 232] three or whatever number of lines were involved?

A. I believe that that is the method that was used. I wouldn't state it definitely as a fact because I haven't read that for some time.

Q. Well, assuming that that is true, would that make any difference in the comparisons as to the percentage of the Holmes & Hallowell scale that the present rates bear to that scale within the State of Illinois?

A. It might make some differences both ways. We have used—some of these average short tariff routes in some cases are over more than three roads; some are less than three roads.

Q. Taking the distance from Herrin, Illinois, for example, to Rockford, your short tariff route there would be via the Illinois Central, Mendota and the Milwaukee. Would that be a fair distance to use in measuring the rate from Herrin to Rockford or do you take the average of the longer routes via the C. B. & Q. and the Missouri Pacific?

A. We think that the proper method of arriving at the distances is to use the average short tariff route distance, that is the shortest route over each origin line

Q. You made some reference to the rates on coal from southern Illinois to Dubuque, Iowa, and other Mississippi River points. Is there a movement of coal from southern Illinois to Dubuque, Iowa, via rail to East St. Louis or Alton and barge up the Mississippi River from those points?

[fol. 233] A. There may be some movement there to Dubuque, yes. I believe there is a movement by barge.

Q. Is it a fact that some time ago your line and other railroads sought to establish a rate from southern Illinois to Dubuque, Iowa, to meet that rail and water competition?

A. That is correct.

Q. And you asked the Commission for 4th Section relief?

A. We did.

Q. What rate did you propose in that case to Dubuque?

A. I believe there was a reduction of 30 cents a ton, and the present rate to Dubuque from southern Illinois on fine coal is $2.45.

Q. But you did ask for a reduction to meet that competitive situation?

A. Yes, but that is—that application is withdrawn for the duration.

Q. That application has been withdrawn?

A. Yes, sir.

Q. But you nevertheless did seek to have that rate established, and did you not state at the time that that was a compensatory rate for the service involved in the transportation of coal from southern Illinois to Dubuque?

A. I don't recall just the information that was given in every 4th Section application.

Q. You testified in that case, didn't you?

[fol. 234] A. No, sir.

Q. Now, in Exhibit No. 2, I want to go back again to the village of Apple River. That is a local point on the Illinois Central Railroad, isn't it?

A. It is.

Q. It is a rural community?

A. It is a small town.

Q. A small town?

A. Yes, sir.

Q. Is there any manufacturing industry located there, at Apple River?

A. Not that I know of.

Q. Is there any competition between anyone in Apple River and anyone in Rockford in so far as manufactured products are concerned?

A. I don't know of any.

Q. Do you know what the population of Apple River is?

A. Oh, I think it is——

Mr. Zoll: He has already answered that.

The Witness: I think it is about a thousand. It is a small town. I stated that before.

By Mr. Bather:

Q. I would like to know definitely why you picked Apple River as a point of comparison with the rates from Illinois mines to Rockford and Freeport.

A. Apple River——

[fol. 235] Q. In other words, what probative value has that comparison in this case?

A. Apple River was taken as one of the comparative points because it is located practically half way between Freeport and Dubuque; and what we were trying to show in this case is that the rates to the involved territory were on a lowel level than the rates to the surrounding territory, and if the rate is a proper rate at Apple River and

Dubuque and Janesville and these other points, then the rates that we propose to the destinations in northern Illinois, which are now under suspension, which are on a lower level, are not unreasonable rates.

Q. Well, couldn't the converse be true that possibly the rate to Apple River is too high as compared with the rates to Rockford and Freeport?

A. The Commission has already called attention to this low spot here around Rockford and Freeport.

Q. Was that before or after the increases of 15 cents were made?

A. That was before the ex parte 115 and 148 increases were made, but those increases have been approved by both commissions.

Q. Nevertheless, the consumer of the coal has to pay the 15 cents?

A. Obviously.

Q. You state that the rates to Chicago are far below a [fol. 236] maximum reasonable level due to intensive competitive situations. Now, what competition exists between the coal shipped from Illinois, Indiana and western Kentucky to Chicago as compared with Rockford, from other sources from which coal is shipped?

A. The situation at Chicago is different from that at Rockford because of the many railroads serving this and the coal, for various purposes, that is drawn from the various territories, both all rail and by rail and lake. The fact that there are so many railroads serving these different origins that converge at Chicago.

Q. It is your contention, then, as I understand it, that there is an intensive competitive situation in coal from the inner and outer crescents as compared with the coal shipped into Chicago from Illinois, Indiana and western Kentucky?

A. Yes.

Q. To what extent are the inner and outer crescent coals from eastern producing points to Chicago or Rockford used for industrial purposes?

A. To Rockford?

Q. Either Rockford or Chicago.

A. Well, the gas company at Rockford uses some eastern coal.

Q. And do you know what that amounts to, Mr. Hamilton?

A. No, I haven't the figures on that.

Q. Do you know what the tonnage of coal from Illinois, Indiana and western Kentucky to Rockford is, for that [fol. 237] shown in the exhibit, approximately 550,000 tons. Do you call that a substantial movement of coal?

A. Yes, that is a substantial movement.

Q. In your testimony, you show that the increased revenue which would be derived from the increases here proposed for the seven destinations in the suspended territory would amount to $104,515.20, as compared with a prospective loss of $21,142 to the points in southern Wisconsin with which comparisons are made.

Mr. Zoll: That is just Beloit.

Mr. Bather: No, it doesn't say that. That is right, to Beloit.

By Mr. Bather:

Q. Now, as I understand it, in order to preserve your revenue at Beloit by maintaining the present rates to that point, you propose to inflict an additional burden of $104,515 on the territory in northern Illinois. Do you consider that a fair way to correct the situation under the order of the Interstate Commerce Commission in the Fairbanks-Morse case?

A. We don't intend to inflict anything on Rockford and Freeport. They have been on a basis below par for a good many years.

Q. And you do not agree with the conclusions of the Illinois Commerce Commission as to the unreasonableness of the rates that they established in the Freeport and Rockford cases?

[fol. 238] A. No, sir. If we did, we wouldn't have started the 13th Section case.

Q. Getting back to that, it is not quite clear to me just what the undue discrimination is between the present intrastate rates and the interstate rates. In other words, in what manner do the present rates discriminate against interstate commerce and to what points?

A. In my direct testimony, I showed the extent of the intrastate movement to these representative points and how much revenue we are being deprived of in the movement of intrastate traffic to those points, and also the amount of additional revenue that we would receive from the handling

of interstate traffic if the state rates were brought up to the basis which we propose.

Q. In other words, as I get it, then, the prime factor in discrimination under your 13th Section allegations is that it is necessary to raise the Illinois intrastate rates in order to enable you to make increases in the interstate rates, not only from Illinois mines moving via interstate routes to Rockford, Freeport and other points but also from Indiana and western Kentucky.

Mr. Zoll: I wonder if we could have that question read again, please, Miss Reporter?

(Question read.)

The Witness: That is one factor that makes it necessary [fol. 239] to increase those rates.

By Mr. Bather:

Q. And was that the primary basis upon which the 13th Section application was filed?

A. Well, I——

Mr. Zoll: I submit that is not a proper question of this witness, who has been asked to give facts about which he has testified.

Mr. Bather: Well, Mr. Examiner, he has testified about these things——

Exam. Trezise: He has something to do with the formulating of these rates and the way he would publish them, whether he would increase one or reduce the other. He can answer that.

Mr. Kaier: The question was, why was the petition filed, what was the principal reason for filing the 13th Section petition.

Mr. Bather: Yes, I want to know why it was filed and the basis upon which discrimination was alleged.

Mr. Kaier: I submit, the petition speaks for itself.

Exam. Trezise: That is another question. I don't know whether Mr. Hamilton had anything to do with that.

Mr. Bather: Well, he can, Mr. Examiner, in my judgment

By Exam. Trezise:

Q. Did you have anything to do with that; did you help formulate that petition? Do you know of any reason why it was written, prepared and sent to the Commission? [fol. 240] What do you know about that?

Mr. Zoll: Of course, he has already testified about exactly why it was filed.

The Witness: I had nothing to do with preparing the petition, but the reasons for filing the petition were that the rates that we had published to comply with the orders of the Interstate Commerce Commission in Docket 25419 were suspended by the Illinois Commission.

By Mr. Bather:

Q. And that was primarily the reason for the filing of the 13th Section petition with the interstate Commerce Commission, because of the fact that the Illinois Commission suspended the rates that you proposed to increase?

A. That is correct. We tried to comply with the Interstate Commission's order, and when we proposed the rates; they were suspended. That is the reason that the 13th Section petition was filed.

Q. Now, in your previous testimony you made some comment about natural gas pipe line serving the industrial district in the southeast part of Rockford. Do you know if natural gas is used by any of the industries in Rockford?

A. I understand that natural gas is used for certain purposes by some of the industries in Rockford.

Q. Do you know to what extent that is true?

A. Well, I understand that it is to the extent that they were using manufactured gas before the natural gas came in there.

[fol. 241] Q. Do you know whether or not that natural gas is used in and of itself, or is it a mixture of manufactured gas and natural gas?

A. Well, it is delivered through the gas company's lines that manufactures the gas, and it may be mixed.

Q. Now, you further stated that the gas company, when it thinks it is necessary, will induce consumers to use gas and convert their plant from coal to gas, regardless of the delivered cost of the coal. To what extent is that true?

A. Are you talking now about these industries at Rockford?

Q. Anywhere. I don't care where it is. Converting of any plant, any industry, from coal to gas.

A. In connection with that, I spoke of the experience we had had at other points.

Q. Is that true at Rockford and Freeport?

A. It is my understanding that there is no natural gas used at Freeport but that at Rockford, the plants are not being operated for power with the gas, but gas is being used for the purposes that the manufactured gas was used and to that extent.

Q. I believe you testified that you didn't know the relative cost of gas as compared with the cost of coal to produce a hundred pounds of steam, for example.

A. I don't think that exact question was asked me, but I can't give you the figure.

[fol. 242] Q. You can't give us that?

A. No, sir.

Q. You do know, though, that a public utility supplying gas cannot make any charge it wants to, without the authority of the Illinois Commerce Commission?

Mr. Kaier: I object, if the Examiner please, on the ground it is a question of law.

Exam. Trezise: Oh, I think we will let him answer.

Mr. Bather: I don't think it is a question of law; it is a question of fact.

Mr. Kaier: The whole thing, Mr. Examiner, this witness couldn't answer that question unless he knew whether the Illinois Commerce Commission had been given jurisdiction, that it had been given a minimum rate power and a maximum rate power over gas rates.

Mr. Bather: Let me call your attention to Mr. Hamilton's direct evidence, in which he states, "When a gas company seeks an outlet to take care of its surplus capacity while it is developing sufficient domestic outlets to take care of its entire supply of gas, the result is that to large manufacturing institutions the gas company usually makes any price that is necessary to get them to convert the plant from coal to gas."

By Mr. Bather:

Q. Now, from what do you draw such a conclusion, Mr. Hamilton?

[fol. 243] A. I drew that conclusion from the experiences

that we had had in connection with the natural gas entering other points in competition with coal.

Q. What points are they? Particularly, is East St. Louis one?

A. Oh, Iowa, East St. Louis, Memphis, various points.

Q. Now, do you know to what extent fuel oil is used in the industries of Rockford or Freeport in the manufacture of their products?

A. No, I do not.

Q. Do you know if any of the industries have converted their plants from fuel oil to coal during the past several years?

A. No, I haven't any specific information at this time.

Mr. Bather: I think that is all, Mr. Examiner.

Mr. Cardy: I would like to ask Mr. Hamilton some questions, please, Mr. Examiner.

Exam. Trezise: All right, Mr. Cardy.

Mr. Cardy: I would just like to ask a few questions to clear up some of these points for further examination of the exhibits.

Exam. Trezise: All right.

By Mr. Cardy:

Q. Now, Mr. Hamilton, as I understand it, this proceeding is really brought about by the order in tl Fairbanks Morse case, the 13th Section proceeding.

A. That is what I have stated.

Q. That order, as I understand it, was directed at [fol. 244] Rockford and the adjustment to Beloit and Rockford and named an increase of 15 cents in the rate to Rockford—an increase in the rate to Rockford of 15 cents?

A. Either that or a reduction of 15 cents to Beloit.

Q. You could have complied with that order by merely increasing the rate to Rockford, could you not, 15 cents?

A. We could hardly get away with a thing like that, Mr. Cardy.

Q. That would have been in strict compliance with the order and you wouldn't have been in violation?

A. We couldn't increase Rockford alone without increasing some other place.

Q. I mean under the terms of the order; under the terms of the order

A. It would have created 4th Section departures which could not be done.

Q. Now, do you know about how many points of destination you increased in northern Illinois in this proceeding?

Mr. Vesey: Just a minute, before that is answered, could I have that last question read back, please?

(Record read.)

The Witness: Instead of 4th Section departures, I might say departures from the long and short haul rule.

By Mr. Kaier:

Q. Long and short haul of the Illinois law?
A. Yes.

Mr. Vesey: If the Examiner please, I would like to get [fol. 245] the answer straight. I got one answer coming from someone over here. I don't know whether it is the witness or not. I wonder if I could get the whole answer read back again?

The Witness: The answer is to increase the rate to Rockford alone without changing any other points.

By Mr. McElroy:

Q. On that point, Mr. Hamilton, did the carriers file an application with the Illinois Commerce Commission seeking authority to depart from the long and short haul section of the Illinois Act?

A. You say did we?

Mr. Cardy: Could they?

By Mr. McElroy:

Q. My question was, did they?
A. No.

Mr. McElroy: All right, thank you.

By Mr. Cardy:

Q. Now, how many points of destination did you actually increase in the northern Illinois territory?

A. Why, I haven't counted the points, Mr. Cardy.

Q. Will you take my word for it that the non-agency stations, you have increased about 350 destinations?

A. I think that is exaggerated.

Mr. Cardy: I will check it over.

Mr. Vesey: I can't hear, if the Examiner please, the questions asked, so I can't follow it.

Exam. Trezise: Will you just come up here a little closer, please, Mr. Cardy.

[fol. 246] Mr. Cardy: Yes, sir.

By Mr. Cardy:

Q. Now, the Sandusky case and the Rockford case, which required a reduction in the rates to Rockford, Freeport and Dixon of 17 cents a ton, heard about ten years ago, those were the only points of destination involved in the 13th Section case before the Interstate Commerce Commission decided in March of 1932, is that not true?

A. No, sir.

Q. What other points were involved there?

A. Well, practically the same territory—

Q. I mean where relief was not granted. Of course, there were a lot of other orders involved; but the only orders dealing with northern Illinois where you did not obtain relief in the Rockford case, Rockford, Freeport and Dixon cases, is that not true?

A. Well, your question is a little involved. I don't understand exactly what it is.

Q. Well, let me ask you this: It is a fact that the Illinois Commission reduced the rates to Rockford, Freeport and Dixon 17 cents a ton?

A. No, they did not reduce the rates to Dixon 17 cents. They reduced them 14 cents.

Q. But 17 cents to Rockford and Freeport?

A. That is right.

Q. Now, following that reduction, isn't it a fact that the [fol. 247] Milwaukee Railroad, from mines on its lines in Indiana, from the Linton district, reduced its rates exactly 17 cents a ton to Rockford?

A. They did; subsequently reduced the rate.

Q. Has that relationship been restored in this proceeding, so far as the points of origin are concerned?

Exam. Trezise: You mean do they propose to restore it?

Mr. Cardy: Yes.

Exam. Trezise: In this proceeding?

Mr. Cardy: Yes, that is right.

The Witness: In this proceeding we propose to continue the present relationship.

By Mr. Cardy:

Q. To the points of origin that existed prior to the reduction of 17 cents a ton to Rockford?

A. We propose to continue the relationship that is in effect now.

Q. But that is different than the adjustment which was in effect prior to the reduction of 17 cents a ton to Rockford, is it not? It is just 17 cents different? In other words, Mr. Hamilton, you know what I am talking about. You know that certain mines in the Linton district in Indiana are 17 cents lower than the mines in the same district on other roads shipping to Rockford, is that not true?

A. That is correct.

Q. Now, wouldn't you think it would be proper to [fol. 248] withhold this investigation, an order in this investigation and not press it until those rates from the Milwaukee mines to Rockford be put on the proper basis and restored to the basis which existed prior to the disturbance of the rate to Rockford by the Illinois Commission?

A. The point is this, that the Milwaukee rates that were reduced were reduced by that line with the idea of restoring the relationship that was in existence prior to the reductions from Illinois. The rates from certain other railroads to Rockford had not been reduced.

Q. You have also some mines in Indiana in the Linton district. Is there any increase in those mines, that is, on the Illinois Central?

A. Is there any proposed?

Q. Yes.

A. Yes.

Q. On the same level as the other mines in Indiana, the same measure?

A. Same measure, yes; the same measure as the rates from other mines in that district.

Mr. Morgan: May I just inquire, you mean company-owned mines, Mr. Cardy?

Mr. Cardy: No, I didn't have that in mind.

Mr. Morgan: Pardon the interruption.

Mr. Cardy: That is all right.

[fol. 249] By Mr. Cardy:

Q. Now, Mr. Hamilton, in considering this adjustment, in increasing the rates, say, to Dixon 5 cents a ton, did you take into consideration disturbance of any competitive adjustment that might obtain by increasing the rate to Dixon and not increasing it to LaSalle and not increasing it to Linwood, Iowa, an interstate point?

I might add in connection with that—first, I will ask you this question: Isn't it a fact that there are cement plants located at Dixon, Linwood and LaSalle?

A. There are cement plants located at those points.

Q. Did you take into consideration a disturbance of competitive conditions that might be brought about by changing the rates to Dixon and not changing the rates to these other two points I mentioned? There are many others I could mention.

A. Well, the increase of 5 cents a ton at Dixon does not bring Dixon back to the relative basis that those three points belonged prior to the time that the Illinois Commission reduced Dixon 14 cents a ton.

Q. What is your rate to LaSalle today, southern Illinois? Isn't it $2.00?

A. No, it is some——

Q. $2.05?

A. No, I would have to look at the tariff to see exactly what it is.

Q. I understand it is the same as the rate to Dixon.

[fol. 250] A. I understand it is somewhat lower.

Q. That is my impression. But there is no increase, anyway, in the rate to LaSalle?

A. No, we didn't propose to increase LaSalle.

Q. Now, Mr. Hamilton, I get the basis that you contend the rates in Illinois are unduly low. The test of reasonableness that you use is by comparing the rates in Illinois territory, Illinois Freight Association territory, with the rate in Western Trunk Line territory moving from Duluth and Superior to points in North, South Dakota and Minnesota.

A. No.

Q. Is that not true?

A. Those rates are not compared with the rates that move from the Head of the Lakes, but steel that was prescribed——

Q. That is in the Holmes & Hallowell territory, is it not, the territory I have described?

A. Yes.

Q. Now, will you state approximately, based upon your experience——

A. You didn't let me finish my answer to your question, Mr. Cardy.

Q. All right.

A. So that the rates to these involved points were not compared to the rates from the Head of the Lakes. The only reference to the H. & H. scale was to show a comparison [fol. 251] of the rates to the involved destination territory in this proceedings with the rates to destinations in the surrounding territory.

Q. Just one more question: Can you state what the relative freight levels should be in Illinois Freight Association territory as compared with Western Trunk Line territory, where the Holmes & Hallowell scale applies? Should the Illinois Freight Association territory be about 60 to 70 or 80 per cent lower than the rates in Western Trunk Line territory?

A. I would say not.

Q. About how much, or what percentage would you say? That applies on all traffic which would fairly reflect the operating conditions.

A. I stated in my testimony here, I called reference to a statement where the Interstate Commerce Commission had said they would not order rates 80 to 87 per cent of the Holmes & Hallowell scale reduced.

Q. I am not talking about the scale; I am talking about the relative level of rates that are actually applied. Can you answer that question or can you not?

A. Well, your question is a little too deep for me.

Q. All right.

A. Maybe you can simplify it.

Q. All right. I will try to simplify it. Can you state what level of rates is generally applied in the Illinois Freight [fols. 252-255] Association territory as compared with the level of rates applied in Western Trunk Line?

A. The Interstate Commerce Commission——

Q. Well, I am asking you if you know. If you don't, say so.

Exam. Trezise: On coal?

Mr. Cardy: On coal or any other traffic. I would like it on coal if he can state, but I would rather have it on all traffic.

The Witness: Well, I understood your inquiry to be with reference to the rates from the docks. Now, if you are raising the question about the level of rates in Western Trunk Line territory, that covers a good deal of territory. The Commission has issued different orders.

By Mr. Cardy:

Q. Yes, confining it to the Holmes & Hallowell territory, where the Holmes & Hallowell scale applies.

A. I might make reference to some orders of the Commission where they have said that they have fixed rates into Illinois that approximated about 85 per cent of the Holmes & Hallowell scale. Rates were not made on the scale.

[fol. 256]

Morrison Hotel,
Chicago, Illinois,
March 22, 1943.

Met, pursuant to adjournment, at 10 o'clock A. M.

Before R. N. Trezise, Examiner, Interstate Commerce Commission; F. B. McElroy, Illinois Commerce Commission

Appearances:

As heretofore noted and the following additional:

August Gutheim, 712 Jackson Place, Washington, D. C., appearing for Western Pennsylvania Coal Traffic Bureau.

Proceedings

Exam. Trezise: All right, gentlemen, we will continue. Mr. Stadell, you had some questions you wanted to ask of Mr. Hamilton, did you not?

Mr. Stadell: Yes, I have some.

B. M. HAMILTON resumed:

Cross-examination (Cont'd).

By Mr. Stadell:

Q. Approximately how long, Mr. Hamilton, has natural gas been available at Rockford and the other northern Illinois points involved in this case?

A. I understand the line has been extended up there within the last two years.

Q. During this study that you stated was made, the [fol. 257] investigation that was made, did you determine the prices that were being charged by the natural gas company at any of these points for gas sold for either industrial or domestic uses?

A. No, I did not.

Q. Did you make any computations to determine the comparative cost of natural gas in any plant at any of the points involved?

A. I did not.

Q. Now, the present rates from the southern Illinois group and from certain of the other Illinois origin groups to Rockford, Freeport, and Dixon, were prescribed by the Illinois Commerce Commission in the three cases referred to in your testimony, were they not?

A. They were, with the addition of the Ex Parte 115 increase.

Q. The orders in those cases were modified to the extent necessary to permit the addition of those increases to the rates prescribed in those three cases?

A. Yes, sir.

Q. Now, the rates that the railroads have proposed here, the increased rates, are different from the rates prescribed by the Illinois Commission in those three cases, are they not? They are higher?

A. Yes, they are higher.

Q. Before the carriers published the increased rates that are under suspension here, from the Illinois origin groups [fol. 258] to Rockford, Freeport, Dixon and the other northern Illinois points involved, did they first petition the Illinois Commerce Commission for modification of the orders in those three cases?

A. No, they did not.

Q. You just filed the tariffs containing different rates or increased rates from those prescribed in the three cases?

A. We did, to comply with the interstate order in 25419.

Exam. Trezise: Do you want to let that answer stand, that the rates that the State Commission prescribed to Rockford, for example, are higher than the present rates? Oh, yes, it is higher, that is true, but not higher than the proposed.

The Witness: Well, I didn't understand the question that way. I understood the question, are the rates that we proposed higher than the rates that were prescribed by the Illinois Commission. Was that your question?

Mr. Stadell: Yes, that was my question.

The Witness: My answer was, yes.

Exam. Trezise: All right. Thank you.

By Mr. Stadell:

Q. Now, you are using the interstate rates from the Illinois groups to destinations in Wisconsin as the yardstick by which you are trying to sustain the suspended rates that you propose to the northern Illinois points, are you not?

[fol. 259] A. We have shown that the rates that we have proposed are no higher, in fact, that they are not as high as the rates to the interstate destinations.

Q. In Wisconsin?

A. Yes.

Q. And you stated, I believe, as is indicated at page 9 of the prepared statement that you passed around, that the present rate or present rates from the southern Illinois group to Beloit, Burlington, Fort Atkinson, Janesville, and Madison, Wisconsin, were prescribed by the Interstate Commerce Commission in the Lake Dock Coal cases as maximum reasonable rates?

A. I did make that statement, but I believe I didn't state it correctly. The Interstate Commerce Commission in the Lake Dock order, 14476, prescribed rates through southern Wisconsin and they said that rates lower than the rates they set out, which was $2.75, to that territory, compared to the then existing dock rates, would be prejudicial to the docks and preferential to the Illinois operators. So instead of being maximum rates, they were really minimum rates.

Q. Well, they were rates prescribed, were they not, to remove an alleged violation of Section 3 of the Act?

A. That is right.

Q. And the railroads could have complied with the order in that case, could they not, either by publishing the rates [fol. 260] which they did publish from the southern Illinois and other Illinois groups to Wisconsin, or by reducing the rates from the docks to points in Wisconsin?

A. If the rates from the docks had been reduced at that time, it would have complied with the order.

Q. Now, did the rates that you published in compliance with the order in the Lake Dock cases from the Illinois groups to points in Wisconsin, including the points in southern Wisconsin, which you referred to, result in increasing the rates from the Illinois mines to those points from 23 to 28, 30 cents per ton?

A. I don't recall the exact figure, but it was a substantial increase.

Q. And the rates in effect today to those points generally in Wisconsin were the rates that were prescribed in the Lake Dock Coal cases, that is, the rates you published in purported compliance with the order in the Lake Dock Coal cases, plus the general increase you referred to, Ex Parte 115 and Ex Parte 148, is that right?

A. I didn't get the first part of your question, Mr. Stadell.

Exam. Trezise: You mean from Illinois?

Mr. Stadell: Yes. You might strike that. I will ask you this question:

By Mr. Stadell:

Q. The rates you have in effect today, interstate, from the southern Illinois and the other Illinois groups to points [fol. 261] in Wisconsin, including the points named by you in southern Wisconsin, are generally the rates that you published in purported compliance with the Commission's order in the Lake Dock Coal cases, except that they have been increased by these general increases in Ex Parte 115?

A. That is correct.

Q. Are you still required to maintain the rates to points in Wisconsin from Illinois by the order in the Lake Dock Coal cases?

A. The order in the Lake Dock Coal cases, 14476, has been vacated.

Q. Isn't it also true that since the order in that case was entered, that the rates from the docks in Wisconsin to destinations in Wisconsin have been substantially reduced?

A. They have.

Q. Now, coming to the testimony that is set forth on the bottom of the first page of your prepared statement, you state there that the action of the Illinois Commerce Commission in suspending the proposed increased intrastate rates from the Illinois mines to the northern Illinois points involved created, as you would later show, undue, unreasonable and unjust discrimination against interstate commerce, and undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other.

[fol. 262] Now, dealing with the question of undue preference and undue prejudice, which you refer to, as having been created by the suspension of the proposed increased intrastate rates, will you tell us who is unduly preferred and who is unduly prejudiced?

A. The receivers in handling coal moving on Illinois intrastate rates are preferred as against the application of the interstate rates.

Q. At what point?

A. Well, at Beloit, for example.

Q. Is your answer correct? I think you misstated yourself.

A. Are you talking about preferred or——

Q. Well, either one. What intrastate receiver at any of the northern Illinois points is preferred?

A. The receivers at Rockford.

Q. Who?

A. Any one using the intrastate rates.

Q. And who is prejudiced?

A. The receivers in southern Wisconsin obliged to use interstate rates.

Q. Is there a competitive relationship—excluding for the moment Fairbanks Morse at Beloit—between any of the receivers of coal at any of the southern Wisconsin points which you have used as comparative points and the intrastate receivers of coal at any of the Illinois points to which [fol. 263] you are proposing increased intrastate rates?

[fol. 264] The Witness: My answer is, yes.

By Mr. Stadell:

Q. Who are they at the intrastate points and at the interstate points?

A. I can't name the receivers specifically.

Q. Can you name one or two, either a domestic consumer of coal or an industrial consumer of coal?

A. I don't like to pick out one particular industry. The [fol. 265] same thing applies to all of them who are using intrastate rates in competition with the interstate rates to the Wisconsin points.

Q. Well, of your own knowledge, you know of no receiver of coal at any of the Wisconsin or Iowa points which you have used as comparative points and any of the intrastate receivers at any of the Illinois points?

A. We have shown the tonnage that moved there on the state rates and on the interstate rates, and the same thing applies to all of them. It doesn't apply to a particular industry.

Mr. Zoll: Of course, Mr. Hamilton was merely stating in that part of his testimony the position of the carriers in a general way, and there will be witnesses from the lines that do serve these southern Wisconsin destinations who will probably be more familiar with the concerns located there.

Mr. Stadell: Well, Mr. Examiner, Mr. Hamilton has very definitely testified here that the intrastate suspended adjustment, by having been suspended by the Illinois Commission, created and I quote his testimony, "as I shall later show," undue, unreasonable and unjust discrimination against interstate commerce, and undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other."

Now, what I am trying to find out is the facts upon [fol. 266] which Mr. Hamilton's testimony is based.

Exam. Trezise: Pardon me. Could we just dispose of that with one question by the Examiner.

Mr. Hamilton, do you have any first hand knowledge of the competition and the intensity of that competition between these various receivers of coal, and in what respect is there competition? I think maybe if you answer that question you will answer part of Mr. Stadell's question.

The Witness: The first part of the answer is, no; and as to the competition, the consumers in Rockford, for example——

Mr. Vesey: Just a minute. I object, if the Examiner please, to answering the second question, if his answer to the first question is "No", that he has no first hand knowledge.

Mr. Stadell: It would be purely hearsay.

Exam. Trezise: As the Examiner understands it, Mr. Hamilton, they want to know, these people, in whatever business they are engaged at these respective origins, whether they compete with each other, and whether one salesman contacts the other salesman in the field, and they are selling the same kind of commodities, and just exactly the intensity of the competition, and in what respect they do actually compete. You do not know that, Mr. Hamilton?

The Witness: I can't answer that.

By Mr. Stadell:

Q. Have any of the interstate receivers of coal at any [fol. 267] of the compared points you have used complained to the railroads that they felt they were being unduly prejudiced by the maintenance of the present adjustment of rates across the state from the Illinois mines to the northern Illinois points involved?

A. Not that I know of, although there have been complaints filed in Wisconsin, for example, at Janesville. Of course, Janesville has since been set by the Interstate Commerce Commission.

Q. Well, the complaint there merely involved the reasonableness of the rates to Janesville, did it not? There was no allegation that there was any prejudice?

A. No, there was not.

Q. And you have no knowledge, have you, of any shipments of coal that have been prevented from being made to the interstate points by the maintenance of the present adjustment of rates from the Illinois mines to the northern Illinois points involved?

A. I have not.

Mr. Stadell: I believe that is all I have. Thank you very much.

Exam. Trezise: You do know, Mr. Hamilton, that some coal traffic moves in interstate and state commerce to these

respective destinations—at least the exhibits show that, do they not?

[fol. 268] The Witness: Yes, sir, they do. There is both state and interstate application at Rockford, for example.

Exam. Trezise: In other words, from the southern Illinois, for example, that being the proper selection of an origin point, there is some coal traffic moving to Rockford in state commerce, and there is some moving in interstate commerce to Beloit, is that right?

The Witness: Yes, that is correct.

By Mr. Stadell:

Q. I have just one more question. Do you know whether the Fairbanks Morse and Company's plant at Beloit is manufacturing the same commodities at the present time that it was manufacturing when the hearings were held and the evidence was presented in the Fairbanks Morse case?

A. I don't know what they are manufacturing. Most manufacturers at the present time are doing a lot of different work than they do under ordinary conditions. I have no knowledge of what they are making.

Q. You don't know then they are engaged entirely——

Mr. Kaier: He said he didn't know. Why tell him.

Mr. Stadell: Your answer is, you don't know?

The Witness: Yes, that is right.

Mr. Stadell: All right, that is all.

Exam. Trezise: Mr. Vesey, do you have some questions?

Mr. Vesey: Yes, I have one or two.

By Mr. Vesey:

Q. Mr. Hamilton, will you direct your attention to the [fol. 269] top of page 8 of your prepared statement, and particularly to that sentence which reads, "Sterling is continued the same as Dixon and the Dixon rate also sets the rate to Amboy." Now, you were speaking in that connection with the movement of coal from southern Illinois. Am I to understand from that statement, the reason for that continuation was the competition that exists, or at least you thought existed between Sterling and Dixon, that is, the industries in those two localities?

A. Well, the reason for that was from southern Illinois the rates to Sterling and Dixon have been on the same relationship for a long time. Therefore, they were continued to Sterling.

Q. Well, was that because, in your opinion, there were competitive industries in those two localities which would necessitate the same rate to be based to both from the same origin groups?

A. I don't know that there are competitive industries, but it is an adjustment that we have had for some time and it was continued.

Q. In other words, I take it from that answer that you know of no reason why there should be a distinction in the rate to the one as against the other, is that it?

A. Not from southern Illinois.

Q. Would it be different from any other origin?

A. It might be different from some shorter group, the [fol. 270] situation might be different.

Q. You mean the rates were continued the same because of the length of the haul from some particular origin group?

A. Well, not particularly the length of the haul. That is the basis that has been carried there for a long time. We were not attempting here to disrupt anything by this adjustment. We are simply trying to comply with an order of the Commission.

Q. Don't you know, as a matter of fact, Mr. Hamilton, the basis for that parity of rate was the supposed competition between industries in those two localities?

A. It may be.

Q. Don't you know that?

A. Well, in working out a rate adjustment, if somebody has had the same rate as another town nearby, whether there is actually competition or not, they usually expect the same adjustment that the other place would get.

Q. Now, if that be true, with respect to what origin group, and I am asking you now a hypothetical question——

A. I am talking about southern Illinois.

Q. Then let us say, if that be true, with respect to coals from one origin group, can you think of any reason that would cause a change from that principle with respect to a second origin group, if assuming that the coal moves to both localities via virtually the same routes?

[fol. 271] A. It might be necessary to comply with the long and short haul rule to carry a lower rate from one group than you would have to apply from another group where that condition didn't exist.

Q. That is why you have your Dixon rate, as you testified the other day, that is why you have it, in the first instance?

A. I didn't get that.

Q. I say, that is why you have the Dixon rate what it is, as you testified the other day, because of the long and short haul provision, with reference to Chicago?

A. That is right.

Q. Now, confining our attention to these two towns, unless that be inherent, I take it from your answer that you know of no reason why there should be a change, is that correct?

A. I don't know of any other reason, no.

Q. Now, you are familiar with the rates that have been proposed by the carriers from the several origin groups to each of the destinations in the affected territory, are you not?

A. Generally.

Q. Isn't it true that your particular railroad in these proposed rates to certain of the suspended points has proposed rates which at times are higher than those generally proposed by the carriers and at other times lower than those generally proposed by the carriers to the same point from the same origin group?

[fol. 272] A. I don't know what you refer to.

Q. I am just asking you, as a general proposition, is that true?

A. Not as a general proposition, it isn't.

Q. Well, let us bring it down to a specific case. The rates which your road has proposed from, let us say, points in Peoria County to destinations on your line are lower, are they not, than the rates which prevail and are proposed by other carriers from origins in the same locality to either the same destination or destinations that is akin to yours on their own line?

A. I think there is a situation where the Burlington has some higher rates via a circuitous route than we have to Peoria.

Q. Isn't it also true the Burlington has some lower rates than yours?

A. It may be.

Q. Now, when you came up against a situation such as that—and I am asking you these questions to find out what you did—how did the carriers determine which rate was that rate, that resulted in discrimination as against interstate commerce? Just tell us how did you go about it?

A. Well, if there are two rates, one lower than the other, the business would probably move on the lower rate. In our adjustment here, we have, generally speaking, and [fol. 273] there may be some exceptions from it, but we proposed generally the same increase in the current rates.

Q. The same increase in the current rates?

A. Yes.

Q. Are you familiar with the rates to Byron, Illinois, from the various origin groups in Illinois, just using that as an example?

A. Well, not particularly familiar with them.

Q. All right. Let me give you this as an assumption, and then let me ask you a few questions with respect to the principles involved. I ask you to assume that the rate to Byron, Illinois, via the Chicago Great Western Railroad and the C. B. & Q., the present rate is $1.64. In fact, the present rate is the same——

A. Excuse me. What rate are you talking about?

Q. The rate from Fulton County.

A. I haven't said anything about Fulton County. There is another witness here who will talk about the rates from Fulton County.

Q. Well, it doesn't make any difference. I am just asking you about general principles here. Assume the present rate is $1.64 from the Fulton County origin group to that destination. Then I will ask you to assume that certain of the carriers have proposed an increased rate of $1.74—one has proposed $1.64 and two have proposed rates of [fol. 274] $1.60, or 4 cents lower. Now, what principle would be followed by the carriers in determining upon rates like that as proposed rates, when the present rates are $1.64? What principle did you use or didn't you use?

A. I didn't testify anything about those rates and I don't think that is a proper question.

Q. I haven't gone to your southern Illinois group. I suppose I might have found the same thing there. But what principle prevailed that might lead to that type of proposal, if any, that you know of?

Mr. Zoll: I would like to ask, Mr. Vesey, if you mean why were such rates published from the Fulton-Peoria group?

Mr. Vesey: Yes, what happened that caused that type of rate.

Mr. Zoll: We have, Mr. Examiner, tried to get various witnesses to testify about the rates for certain groups. Mr. Nelson is going to testify about the rates from Fulton-Peoria.

Exam. Trezise: Did you apply any principle with respect to those rates, Mr. Hamilton, and did you have charge of the applying of any particular principle in that case? As a matter of fact, and if you want to answer it in a hypothetical way, what would you have applied if you did apply one?

The Witness: As a matter of fact, we don't serve Fulton [fol. 275] County, and the measure of the increases in those rates were decided by the lines that serve it.

Exam. Trezise: He wants to know if you did serve it and you did do this thing, what would you have done, if you want to answer that question.

The Witness: I think I would have to sit down and study it over.

Exam. Trezise: You would have to become more familiar with the rates and the influences that applied in the territory that you do not serve before you could give an intelligent answer as to what you would have done had you done something concerning something that you didn't have anything to do with, is that right?

The Witness: That is correct, yes, sir.

Exam. Trezise: Now, let us not have so many more of those questions. May we confine our testimony to what the witness knows about and let us get away from the hypothetical question, if we can.

Mr. Vesey: If the Examiner please, I don't want to take this witness down point by point. I thought perhaps there were some general principles here that we could elicit to save some time. If not, I will take him through this point by point.

By Mr. Vesey:

Q. Mr. Hamilton, take your own rates to Dixon, Illinois, proposed by you, from Peoria. You have proposed a rate [fol. 276] to Dixon of $1.37, have you not?

Mr. Cardy: What page is that on, Mr. Vesey?

Mr. Vesey: I am not referring to his particular exhibit.

Mr. Zoll: What is the route, Mr. Vesey?

Mr. Vesey: Illinois Central direct.

Mr. Zoll: From Fulton-Peoria?

Mr. Vesey: From Peoria.

The Witness: That was an increase of 5 cents a ton, same increase that was made from the other origins.

Mr. Vesey: Did you answer the question?

The Witness: I answered that that was an increase of 5 cents a ton there, the same as made from the other origins.

By Mr. Vesey:

Q. But the rate is $1.37?

A. Yes, sir.

Q. What is the mileage involved there from Peoria via your line? If you turn to page 11 of Exhibit 3, I think you will find it.

A. 123.1 miles, shown on page 11 of Exhibit 3.

Q. Now, isn't it true that the rates which you have proposed via your road and the C. B. & Q. Railroad is $1.55 from Fulton County to Dixon? That is also to be found on page 11 of your Exhibit 3.

A. That exhibit shows $1.50—I guess the suspended rate is $1.55.

Q. And the mileage as shown on that same page for that, [fol. 277] that is the average mileage there from the group, 123.8 miles, isn't it?

A. The average for the group is, yes, sir.

Q. Virtually the same as the mileage involved in the case of your direct movement from Peoria?

A. The average from Peoria is 110.7 miles.

Q. But I am speaking about your own 123.1.

A. Yes, but our distance is not the short distance there.

Q. No, I am just speaking about your own particular line and the distance over your particular railroad is 123.1, isn't that correct?

A. Yes, sir.

Q. Virtually the same as the average group in the last illustration, is that right?

A. That is right, but it is not the same as the average from the group.

Q. Now, tell me, Mr. Hamilton, which of those two rates are causing this intrastate discrimination as against inter-

state commerce, as you speak of? Is it the $1.32 rate or the $1.50 rate?

A. Well, I couldn't put my finger on the particular rate.

Q. When you and your committee came up against situations like that, how did you go about determining which of the rates was causing the discrimination?

A. We tried as near as could be done to continue the re- [fol. 278] lationship which we had with the rates in the various groups.

Q. Well, which rate is the discriminatory rate? Is it the $1.32 that is causing the discrimination or it is the $1.50 rate?

A. I can't say.

Q. Do you know, and if so, what is the discrimination?

Mr. Zoll: He said he couldn't say.

Mr. Vesey: Well, I say, does he know?

The Witness: No, I don't.

Exam. Trezise: And we might ask, did you feel that it was necessary for you to determine the answer to that question before you made this allegation?

The Witness: No, sir, I did not.

Mr. Vesey: That is all.

Exam. Trezise: Do we have any further questions of Mr. Hamilton?

Mr. Bather: I have one, if the Examiner please.

Exam. Trezise: Mr. Bather.

By Mr. Bather:

Q. Mr. Hamilton, in Exhibit No. 2, I note that in so far as the rates to Elgin, Illinois, are concerned, no increase is proposed, the present rate from southern Illinois being $2.20. Why was that rate level continued as it is at present, without any increase?

A. I can't say, Mr. Bather. Evidently it was considered not necessary to increase that rate. However, there are [fol. 279] other lines that serve Elgin, that may be able to give you a more definite reply to your question.

Q. You don't know why that rate was left stationary?

A. No, sir.

Mr. Bather: That is all.

Exam. Trezise: Any further questions?

Mr. Cardy: Just one question.

Exam. Trezise: Mr. Cardy.

By Mr. Cardy:

Q. Mr. Hamilton, as I understand it, none of your testimony is directed against the rates from northern Illinois. In other words, you said in the opening that what you said had no application on the rates from northern Illinois to these destinations, for the reason another witness would follow you on that?

A. That is correct.

Q. Just one other question. I notice in the preparation of these exhibits that you refer to certain origin groups, including all of the groups in Illinois, except the northern Illinois group, and you describe the northern Illinois mines as in the northern Illinois district. Is there a reason for that, Mr. Hamilton?

A. Well, there was a good deal of short haul territory here involved, where the rates were not the same from all points in the northern Illinois group, and they were for that reason taken out of the general exhibit and a special exhibit [fols. 280-343] made to show those specific origins.

Q. In other words, is this stating it correctly, that generally speaking, the rates from northern Illinois to points in northern Illinois are generally what might be termed the short haul rates, and a great many different rates which would be rather difficult to tie it to a wide adjustment such as we have here involved, is that true, generally speaking?

A. Well, there are a number of points where that condition exists.

Mr. Cardy: That is all.

Exam. Trezise: If there are no further questions, you may be excused, Mr. Hamilton.

The Witness: Thank you.

(Witness excused.)

[fol. 344] Exam. Trezise: Call the next witness.

Mr. Biaett: We call Mr. C. J. Nelson.

[fol. 345] C. J. Nelson was sworn and testified as follows:

Direct examination:

Mr. Biaett: Mr. Examiner, I submit Mr. Nelson's Exhibits 8, 9, 10 and 11, for identification.

The statement showing production and disposition of coal in net tons at mines in northern Illinois for the years 1937 to 1941, inclusive, will be Exhibit No. 8.

(Respondent's Exhibit No. 8, Witness Nelson, marked and received in evidence.)

Mr. Biaett: The statement showing production and disposition of coal at mines shipping by rail listed below during years 1932 to 1941, inclusive, consisting of two pages, will be Exhibit No. 9.

(Respondent's Exhibit No. 9, Witness Nelson, marked and received in evidence.)

Mr. Biaett: Statement showing number of net tons of bituminous coal forwarded from mines in Illinois, Indiana and western Kentucky for ten-year period January 1, 1932, to December 31, 1941, by years, to various destinations in the states of Illinois, Iowa, Wisconsin, Missouri and Nebraska as shown herein, will be Exhibit No. 10.

(Respondent's Exhibit No. 10, Witness Nelson, marked and received in evidence.)

Mr. Biaett: Exhibit No. 11 is a one-sheet statement showing average level of rates from all origin groups to repre-
[fol. 346] sentative suspended points and representative comparative points.

(Respondent's Exhibit No. 11, Witness Nelson, marked and received in evidence.)

By Mr. Biaett:

Q. Will you state your name, please.

A. C. J. Nelson.

Q. What is your position, Mr. Nelson?

A. Fuel Traffic Manager, Chicago, Burlington & Quincy Railroad, 547 West Jackson Boulevard, Chicago.

Q. How long have you held that position, Mr. Nelson?

A. Three years. Prior to that time I was Coal Traffic Manager for four years. Therefore, during the past seven

years I have had supervision over rates, divisions, solicitation of coal and coke, and for the past three years petroleum in addition to the coal and coke. Prior to seven years ago I held various positions in the Traffic Department of the Burlington Railroad.

Q. Have you made a study of the issues involved in these proceedings, Mr. Nelson?

A. How was that?

Q. Have you made a study of the issues involved in these proceedings?

A. I have, yes, sir.

Q. Do you have a statement which you would like to make respecting the issues involved in these proceedings?

[fol. 347] A. I would.

Mr. Vesey: If the Examiner please, I will object to that. It seems to me that is too great latitude to give the witness here when it comes to a controversial matter. That is just the same as giving him a broad blanket request to go ahead and say something.

Exam. Trezise: Do you want to modify your question?

Mr. Biaett: I don't believe it is necessary, Mr. Examiner. This witness is a traffic witness and qualified, and we are entitled to have him go ahead with his statement. We can proceed on questions and answers, but it hasn't been prepared in that way and it would be quite a time waster for us to proceed in that manner.

Exam. Trezise: Well, then when you say statement, Mr. Biaett, you mean you want him to describe the rate situation? Is that what you had in mind?

Mr. Biaett: I might phrase it in that way.

Exam. Trezise: Is that what you want? You can phrase it to conform to what he is going to do.

By Mr. Biaett:

Q. Mr. Nelson, have you made a study of the rates involved in these proceedings?

A. I have.

Q. Are you familiar with the rates surrounding the transportation of coal from the various Illinois groups to the suspended destinations in Illinois and the comparative desti-

[fol. 348] nations in Iowa and Wisconsin?

A. Yes, sir.

Q. Will you please proceed with your statement of the facts surrounding the transportation of coal from the Illinois groups to the destinations involved in these proceedings?

Mr. Morgan: Off the record, may I ask is he limiting his testimony to the Burlington or all the railroads?

Mr. Biaett: He will state himself the manner in which he is limiting his testimony.

The Witness: I am testifying for all the petitioning lines, as well as the Burlington Railroad. I would like to make one short statement about the method in which the carriers have proposed the rates. There seems to be some question about the manner.

I desire to state that the rates from mines in Illinois, Indiana and west Kentucky to the destinations in northern Illinois, which the carriers have proposed, which are involved in this proceeding, constitute an intricate and complicated adjustment because of the fact that many interests are involved and that the rates apply over many routes and which enter the territory from three different directions, east, south and west. In view of this situation, the carriers have in their effort to raise the level of the present rates, which are admittedly on a depressed basis——

Mr. Bather: I object to that. That is a conclusion.

[fol. 349] Mr. Morgan: I object to that.

Mr. Biaett: Now, Mr. Examiner, these witnesses are not permitted to express conclusions and opinion on direct testimony, and yet, all these gentlemen insist upon them rendering conclusions and opinions on cross examination. I can't understand that, and I would like to have it determined once and for all. I think it would save a lot of time.

Exam. Trezise: Didn't you say "admittedly"?

The Witness: Yes, sir.

Exam. Trezise: The witness, I understood, stated "admittedly". I think that that may not be exactly the word that he meant, and if he will use some other term that he thinks would be more suited to it, if he has one, I think there wouldn't be any objection to it. Have you some other form of expression you want to use, because you are going to be cross examined on that "admittedly".

The Witness: I will change that, Mr. Examiner. It is my opinion that they are on a depressed basis.

By Mr. Biaett:

Q. Mr. Nelson, did not the Interstate Commerce Commission find the rates to be on a depressed basis in the decision in Docket No. 23130, 182 I.C.C. page 537?

Mr. Vesey: I object, if the Examiner please. The decision speaks for itself.

Mr. Bather: I object to that.

Exam. Trezise: Mr. Nelson—I don't know why I should [fol. 350] get into this—the Commission said that the rates to northern Illinois in that 13th Section case were relatively low, and so they were also from Indiana, and that is just about as far as we can go on that, is that true?

The Witness: That is right.

Exam. Trezise: If you know what they said in the case, I don't know that that makes any difference now.

Mr. Wood: Our point is, Mr. Examiner, he can't improve much on what the Commission said.

Exam. Trezise: Yes, sir, and I am with you 100 per cent.

Mr. Wood: And I insist he not gild the lily.

Exam. Trezise: I think we may proceed.

The Witness: They have, so far as possible, endeavored to perpetuate the present relationships for differences in the rates from the various districts, by applying a uniform increase. In some instances it has been necessary to depart from this formula in order to avoid violation of Section 4 of the Interstate Commerce Commission Act and Section 40 of the Illinois Commerce Law, but generally, it has been adhered to. I know of no fairer or more satisfactory manner, from the standpoint of all concerned, in which to do this.

I would like to refer to Robertson's Exhibit No. 1, which is a map of the origin districts in Illinois, Indiana and western Kentucky. The C. B. & Q. serves mines in a number of these districts; southern Illinois, which is shown by letter [fol. 351] H; Centralia, by the letter E, Springfield, by the letter D, Fulton County, by the letter C, Peoria, Alpha, Victoria, Rushville, in northern Illinois. They also serve part of the destination area which is involved in this proceeding. Therefore, they have a direct interest in the entire adjustment. All my testimony will to a great extent relate to the rates from northern Illinois, Fulton County, Peoria, Rushville, Victoria, Alpha, and Atkinson. Never-

theless, I will have something to say about those from the other districts.

The rates on coal from mines in northern Illinois, Fulton County, Peoria, Victoria, Rushville, Alpha, and Atkinson to the destinations involved have never been definitely related to those from other districts in Illinois or Indiana or to each other. For this reason, my testimony will deal with the rates from each individual group or origin point.

Mr. Cardy: Was northern Illinois in that statement? I didn't hear that.

The Witness: Yes, sir.

Mr. Cardy: All right.

The Witness: The exhibits presented by witness Robertson showing the distances, the history of rates from each group or origin point to representative destination points indicates that the distances involved are comparatively short and that the present rates are on a low level. The suspended rates which the carriers are supporting are also low [fol. 352] in level and cannot be classified as unreasonable.

Mr. Vesey: I object to that and ask that that be stricken.

Exam. Trezise: That is your opinion, Mr. Nelson?

The Witness: That is my opinion, yes, sir.

Exam. Trezise: Let it go at that.

The Witness: The present rates have either been established by voluntary action of the carriers or have been published in compliance with orders issued by the Illinois Commerce Commission.

The mines in the northern Illinois group extend over an area of 50 miles east and west, or from Depue, on the west, to Wilmington, Illinois, on the east. Because of their geographic location, compared with the destination area, the rates and routes vary greatly, making it necessary to show the distance and rates, present and suspended, from each origin point to each representative destination. Northern Illinois is shown on the map by an encircled letter A.

Victoria is located in Knox County on the Galesburg and Great Eastern Railroad, 17 miles east of Galesburg and north and west of the Fulton County district. The Galesburg and Great Eastern Railroad connects with the C. B. & Q. Railroad at Wataga, 7 miles east of Galesburg. The present rates from this point to destinations on railroads other than the C. B. & Q. in the destination territory involved

[fol. 353] are generally the same as those from Fulton County. To points on main line of the Burlington east of Wataga to and including Aurora, and the points on the Rockford Branch, the rates are generally five cents less than those from Fulton County. To points north of Galesburg, in the tri-city area, they are five cents less, and to points east of Peoria they are six cents less. That includes Chicago. To the balance of the C. B. & Q. destinations in northern Illinois they are generally the same as those from Fulton County. Peoria is located north and east of the Fulton County District, and the rates therefrom are generally the same as those from the Fulton County District. In some instances they are different, and for this reason the Peoria situation has been shown separately.

Rushville, Illinois, is a short distance south of the Fulton County District, and the rates therefrom are generally five cents per ton higher than those from Fulton County. You will note Rushville on the map south and west of the Fulton County field. Alpha is located 18 miles north of Galesburg and south of the tri-cities, approximately 60 miles north and west of the Fulton County District. The rates therefrom are generally less than those from Fulton County to the destination area involved.

Atkinson is located about 30 miles — of Rock Island, Illinois, on the Rock Island Railroad, and is north and east of the Fulton County District. The rates therefrom are gen- [fol. 354] erally less than those from Fulton County to points on the Rock Island Railroad and the same or higher to points on other railroads. In some instances there are no through rates in effect.

The mines in the northern Illinois group are as previously stated spread over a large area. They are, generally speaking, south and east of the destination area, and the distances from mines to destinations vary greatly. The hauls are comparatively short and it has not been possible for the carriers to maintain in all instances uniform rates from the group to each destination.

In Section 4 of Robertson's Exhibit No. 3——

Mr. Vesey: May I interrupt just a moment, Mr. Nelson. Off the record, you said it would not be possible for the carriers to effect uniform rates from the group. What group did you have in mind?

The Witness: Northern Illinois.

Mr. Vesey: Thank you.

The Witness: In Section 4 of Robertson's Exhibit No. 3 is shown rates and average distances from these mines to representative suspended and comparative destinations. To illustrate this variation there is shown on page 2, section 4, a rate of $1.88 from Braidwood, Illinois, to Sterling, Illinois, a distance of 128 miles, applicable via the Alton, E. J. & E., and C. & N. W. Compare this rate with $1.59 [fol. 355] from Oglesby, Illinois, to Sterling, Illinois, a distance of 59 miles, shown on page 5 of the same section.

Many of the rates have been established in compliance with the Illinois Commission's orders in dockets 13568 and 13569, where they prescribed a rate of $1.00 to Rockford and Freeport. In some instances there is a variation of five cents per ton between the intrastate and interstate rates which has been caused by the application of ex parte 115 increase. In other instances the variation intrastate versus interstate rates is greater and is due to the fact the carriers did not in all cases reduce interstate rates when the intrastate rates were published in compliance with the order just mentioned.

The mines in Fulton County District are the largest and most important of the districts located in the northern part of the state. The field lies almost entirely within the county that bears its name and it is west and south of Peoria. This field, as previously stated, is indicated on the map by the letter C.

Turning to the northern Illinois district for a moment, I want to point out the fact that the largest mine in the field is one located at Wilmington. The other mines in the district are comparatively small and are not of any great importance from a railroad traffic standpoint. This is illustrated by an exhibit that I have presented, No. 8. [fol. 356] It is a statement showing production and distribution of coal at mines in northern Illinois having a rail connection, during the five-year period, 1937 to 1941, inclusive. At two points, Granville and Marseilles, the mines have been abandoned. Therefore, under present conditions there is no necessity for rates from these points. The carriers, however, elected to maintain them with the hope that new mines would be opened some day and production resumed.

It will be noted that at all mines, except the one at Wilmington, the tonnage by trucks greatly exceeds that shipped

by rail; also that even at the Wilmington mine, the truck tonnage is quite high, being 178,000 tons in 1941.

Now, this exhibit is self-explanatory. The five-year period is named in one column.

Mr. Cardy: Which number is the exhibit?

The Witness: No. 8. The total production is shown in the column after the years. The next column shows the commercial coal if it is shipped by rail. The next one shows the coal that is sold to the railroads. Next is the coal that is used in locomotives. The next shows the number of tons sold to the truck trade. The next to the last column is the number of tons consumed at the mines. The last column is all coal not sold, including waste. The authority for the figures is shown at the bottom of the page.

All of the mines are equipped with truck chutes or bins [fol. 357] and they depend on the truck trade to take the majority of their domestic sizes, that is, lump, egg, nut, and stoker. By that statement, I mean all of the mines with the exception of the Wilmington mine.

Their realization on coal sold to trucks is greater than that on coal shipped by rail due to higher mine prices which they maintain and which are permitted by the National Coal Division. The greater part of the rail movement, except from Wilmington, consists of fine or slack sizes and the majority of it is shipped to Chicago, Ottawa, LaSalle and Streator, Illinois. This exhibit shows that with the exception of the Wilmington mine, the mines have no great interest in the rates involved in this proceeding.

Sections 5 and 6 of Robertson's Exhibit No. 4 contain statements which indicate the level of the suspended rates to representative suspended destinations, also of present rates to representative comparative destinations. Columns E and D on these statements show the percent the suspended rates are of the H. H. scale for the distance involved, and it will be noted that generally speaking all are much below the level of the scale, and that the suspended rates are lower in level than the comparative rates. This is particularly true as to rates from Wilmington at which point the greater part of the rail movement originates.

The statements also show the mills per ton mile produced [fol. 358] by the rates and it will be noted that they are well below a maximum reasonable basis, particularly in view of the short hauls involved.

Mr. Bather: Now, Mr. Examiner, I think this is argumentative. I think all that testimony has been put in this record by previous witneses, and I don't believe this is the time to argue the case. All of this testimony is nothing but argument.

Mr. Biaett: The witness can certainly state in his opinion what certain facts show.

Mr. Bather: I think all of that is in the record now, based on the testimony of Mr. Robertson and Mr. Hamilton.

Mr. Morgan: His last statement was not an opinion statement.

Exam. Trezise: So far as I know, I haven't heard anything that I could rule out. You can tell what the rates were, higher or lower than other rates. That might help the Commission, at least call it to their attention. Go ahead.

Mr. Wilkinson: I take it, Mr. Examiner, if the witness says, as I understood the last statement to be, that this shows the rate is unreasonable, or something of that sort, we are to take that as his opinion, that he is expressing his opinion that the rate is unreasonable, rather than any of us admitting it is a fact.

Mr. Kaier: We won't attempt to bind you by that state-
[fol. 359] ment, Mr. Wilkinson.

Mr. Wilkinson: I think that might save some objection, if we understand he has used that expression as merely expressing his opinion.

Exam. Trezise: Yes. That is giving one man's opinion as representing the carriers, as he does.

The Witness: I have a few comments to make about the general adjustments indicated by the rate history being in Robertson's Exhibit No. 4, sections 1 and 2. I will select Rockford as a representative destination. Rockford is shown on page 8. The first important change was a general increase by General Order No. 28, effective June 25, 1918. The next general increase was under Ex Parte No. 74, August 26, 1920, originally 33⅓ per cent on Illinois intrastate traffic, and later made 40 per cent, the same as interstate traffic.

This was followed by a 10 per cent reduction. Reduced rates of 1922, on July 1st, 1922. On August 20, 1930, the rates from northern Illinois to Rockford, Freeport, and intermediate points were reduced in compliance with the Illinois Commission's order in Dockets 13568 and 13569, the

reduction at Rockford being 47 cents. On November 15, 1937, a general increase under Ex Parte 115 was made, and the intrastate increase was 5 cents, and the interstate 10 cents. At this time the carriers attempted to increase the intrastate rates from northern Illinois the same amount as from southern Illinois, which practice was permitted by [fol. 360] the Interstate Commerce Commission, the southern Illinois increase being 10 cents per ton. They were unable to do so because of the opposition of the northern Illinois and Fulton-Peoria operators who maintained that there was no definite relationship between the northern Illinois and Fulton-Peoria and southern Illinois rates.

Mr. Cardy: What was that last statement?

The Witness: No definite relationship between the northern Illinois and Fulton-Peoria and southern Illinois rates.

Mr. Cardy: All right, that is your opinion, I suppose.

The Witness: That was the opinion of the Fulton County and northern Illinois operators. When they took it before the Illinois Commission, they took the position that the rates from northern Illinois should be increased in accordance with the scale authorized in the Ex Parte 115 order. The Illinois Commerce Commission sustained their objections and issued their order accordingly. The application of a uniform increase would have maintained the relationship or difference in rates that then existed. The next general increase was 5 cents per ton on May 16, 1942, under Ex Parte 148.

I have another exhibit, No. 9, which consists of two pages, and is a statement showing production and disposition of coal in net tons at mines shipping by rail located in Fulton, Peoria, Victoria, Alpha, Rushville, and Atkinson groups or origin points, during the years 1932 to 1941, inclusive. [fols. 361-364] This statement is similar to Exhibit No. 8, except it covers a longer period. The number of mines shown in the Fulton County District is separated between strip and shaft operations, and attention is directed to the increase in the number of strip mines and the decline in the number of shaft mines.

. . . . . .

[fol. 365] The Witness: The mines in Peoria County are all shaft mines and all have been closed permanently, except one—that is, all the mines having rail connection have closed with the exception of one. The majority of the com-

mercial coal shipped from this mine goes in cars and is billed to industries in the Peoria-Pekin District. The largest sizes, that is, lump, egg, nut, is sold to trucks.

The mine at Victoria is a strip operation which opened in 1936 and has produced heavily since then. The commercial rail movement in 1941 was over 475,000 tons.

The mine at Alpha, Illinois, is a shaft operation and a large part of its production is sold to trucks. During the last three of the ten years shown on the statement, the truck movement has exceeded the commercial rail movement. A large part of the commercial rail movement consists of fine coal that is shipped to the tri-cities.

The mine at Rushville, Illinois, is a strip operation which opened in 1941, and more than one-half of its output is sold to trucks. The mine at Atkinson is a strip operation and a steady producer. A large part of the rail movement is [fols. 366-369] shipped to the tri-cities and LaSalle, Illinois, Clinton, points in eastern Iowa such as Clinton, Cedar Rapids, Waterloo, Iowa City; authority for the figures in the statement *are* shown at the bottom of page 15.

Exam. Trezise: We will adjourn at this time until 10 o'clock tomorrow morning.

Mr. Bather: Before we get off of that exhibit, Mr. Examiner, I would like to ask for my own information, what is the difference between railroad coal and coal used on locomotives? Why have you separated those?

The Witness: The railroad coal is that which is loaded in cars and turned over to the railroads at the mine; and that which is sold to locomotives, that is what is loaded into locomotives at the mines.

Mr. Bather: But the locomotive coal would essentially be railroad coal, would it not?

The Witness: Yes, it is railroad coal.

Exam. Trezise: Ten o'clock tomorrow morning.

(At 4:45 o'clock P. M. March 22, 1943, adjourned to 10 o'clock A. M. March 23, 1943.)

* * * * * * *

[fol. 370] Let's proceed.

C. J. Nelson resumed.

Direct Examination (Con't).

By Mr. Biaett:

Q. Mr. Nelson, will you continue with the discussion of your exhibits, beginning with Exhibit No. 10.

A. I have previously explained the necessity of considering separately instead of collectively the rates from Fulton County, Peoria, Victoria, Rushville, Alpha and Atkinson, Illinois, in this proceeding. Fulton County is considered the most important of these groups because of the large and increasing volume of tonnage that is produced therein.

In the statement showing history of rates from various [fol. 371] groups to representative suspended and comparative destinations, sections 1 and 2 of Robertson's Exhibit No. 4, I will again select Rockford for the purpose of commenting thereon.

Mr. Morgan: Mr. Examiner, we can't hear over here.

Exam. Trezise: Off the record.

(Discussion outside the record.)

Exam. Trezise: Proceed, Mr. Nelson.

The Witness: These comments apply not only to the Fulton County rate but also to other rates shown in the statements.

The first change in rates from Fulton County to Rockford was an increase of 15 cents on July 20, 1917. The rate was advanced from 87 cents to $1.02. The next was the General Order No. 28 increase in 1918, which was followed by Ex Parte No. 74 increase in 1920 and the general 10 per cent reduction (reduced rates of 1922) in 1922. In 1930, a reduction of 17 cents was made in compliance with Illinois Commission Order Docket 13569; and a further reduction of 14 cents in August of 1930, the latter being voluntary on the part of the carriers. Rates to Freeport and Beloit and intermediate points were affected by this adjustment.

The Ex Parte 115 increase was added in 1937 and Ex Parte 148 increase in April of 1942, leaving the present rate $1.55, which is 68 cents higher than it was in 1910.

During the same period, the rates from other fields in-
[fol. 372] creased more than this amount. Southern Illinois rates increased 92½ cents; Belleville 83 cents; Princeton $1.00. The present rate from Fulton County is 60 cents less than the rate from southern Illinois. In 1910 the difference was 35 cents.

Rates from Beloit are generally the same as those from Fulton County. In some instances rates from Fulton County apply through Peoria via certain routes. Illustrations of where Peoria rates are different are as follows. To Amboy, the Peoria rate is 18 cents lower via the Illinois Central than the Fulton County rate and 48 cents higher via other routes. The Dixon rate, from Peoria—no, Dixon, Illinois, where Peoria rate is 18½ cents lower; Polo, Illinois, the Peoria rate via some routes is lower than via others; Rochelle, Illinois, the rate from Peoria is 31 cents higher than the rates from Fulton County. Rates from Peoria via the Burlington Railroad to northern Illinois destinations are generally higher than the rates from Fulton County. Mines at Peoria have for many years sold the majority of their production to consumers in the Peoria-Pekin district. The lump, egg and stoker sizes, commonly known as domestic sizes, are usually sold to truckers at the mines and the fine or slack sizes loaded into cars for switch movement to industries; therefore, the movement into northern Illinois has been very small. In some instances, distances via the C. B. & Q. are greater than that via direct
[fol. 373] routes. These facts are the principal reasons why the rates via the C. B. & Q. have been maintained on a higher level. They are to a great extent paper rates.

Rates from Rushville, Illinois, are generally 5 cents per ton higher than rates from Fulton County. Rushville is located on the Burlington Railroad south of Fulton County. The average distance from this point to the destination territory involved is about 30 miles greater than the average distance from Fulton County.

Rates from Victoria to destinations in northern Illinois on roads other than the Burlington are generally the same as those from Fulton County. To destinations on the C. B. & Q. in the eastern part of the territory or on the line running north from Aurora to Rockford, also to points in the western part, toward the Tri-Cities, they are 5 cents less than the rates from Fulton County. To the balance of the C. B. & Q. points they are the same. The average dis-

tance from Victoria to the 12 representatives suspended destinations is 17 miles less than the average distance for Fulton County.

Rates from Alpha, Illinois, to destinations in northern Illinois on roads other than the Burlington are generally the same as the rates from Fulton County. To destinations on the C. B. & Q. in the western part of the destination area, they are less; and in the eastern part they are the same. The [fol. 374] average distance from Alpha to the representative suspended points is approximately 40 miles less than the average distance from Fulton County.

The mine at Alpha sells a large part of its domestic sizes, that is, lump, egg, nut and stoker, to trucks; and therefore the rail movement consists principally of slack or fine sizes, which is shipped to industries in the Tri-Cities. The small amount of rail coal that is shipped to destinations in northern Illinois goes to those on the C. B. & Q., Sterling and west thereof.

The Illinois Commerce Commission in docket 13572, decided May 19, 1926, as modified by general increase Ex Parte 115, prescribed rates from Alpha to destinations in northern Illinois within the radius of 87 miles which were less than those from Fulton County to the same destinations. The Interstate Commerce Commission prescribed rates from Alpha to destinations in Iowa within a radius of 100 miles from Davenport, which were less than those from Fulton County. 182 I. C. C. 537; 232 I. C. C. 5.

To many destinations in northern Illinois located on roads other than the Rock Island Railroad, there are no through rates in effect from Atkinson, Illinois. To others the rates from Fulton County are the same as those from Atkinson. To destinations on the Rock Island Railroad in northern Illinois, the Atkinson rates are generally less than [fol. 375] the rates from Fulton County. Rates from Atkinson to points in eastern Iowa within a radius of 100 miles from Davenport are less than the rates from Fulton County to the same destinations and are generally the same as the rates from Alpha. The average distance from Atkinson to the northern Illinois representative suspended destinations to which through rates are published is approximately 32 miles less than the distance from Fulton County to these destinations.

The mine at Atkinson does, as previously stated, ship the majority of its coal to the Tri-Cities and other points

on the Mississippi River, also to points in eastern Iowa and to cement mills at LaSalle, Illinois. The greater part of its production is fine or slack coal, suitable for industrial purposes.

Under the conditions that exist, in view of the facts I have related, it appears that the rate adjustment from these origin points which the carriers have maintained in the past, and which they propose to maintain in the future, is logical and sound. Robertson's Exhibit No. 4, Section 3, shows the level of the suspended rates from these origins to representative suspended destinations, as compared with the Holmes & Hallowell scale rate, and is generally lower than the level of the present rates to the representative comparative destinations shown in Section 4 of the same exhibit.

Witness Hamilton has testified regarding the level of the [fol. 376] rates from Illinois districts to Chicago and has given details as to the necessity of maintaining them on a depressed basis; the principal reason being competition of eastern coal transported by rail and lake and all rail. In the territory west of Chicago, the competition on eastern coal slackens as the rates increase, and therefore the necessity of continuing low rates from the Illinois groups decreases. To the territory in northern Illinois involved in this proceeding, the rates on eastern coal range from 75 cents to $1.10 per ton higher than the rates to Chicago.

There is no water competition in the territory and truck competition is not severe. There is not, in my opinion, any reason why the rates from the northern Illinois, Fulton, Peoria and other origin points from which the hauls are comparatively short, should not be maintained on a level equal to or higher than that proposed. The rates from Fulton County to points like Rockford, Freeport and Dixon, which are from 70.5 per cent to 87.1 per cent of the Holmes & Hallowell scale cannot, in my opinion, be properly considered unreasonable. This territory should not be rated lower than that in Ohio, where the Interstate Commerce Commission prescribed rates that range from 83 per cent to 106 per cent.

Mr. Morgan: I object, unless the witness goes on to explain comparable conditions between the two territories. There is nothing shown in the record that would indicate a

[fol. 377] comparative condition in any respect between Illinois rates in question and the Ohio rates.

Mr. McElroy: Perhaps that will be developed as the testimony goes along.

Mr. Morgan: I raise the question because it is a continuous statement and if it is to be developed and explained and demonstrated to be comparative, that is another question.

Exam. Trezise: Well, you may cross-examine to determine why he says that, to see whether there is any reason. Maybe there is no reason for the statement at all, I don't know. I do know but, then, I don't want it to go on the record.

You may continue.

The Witness: Range from 83 to 106 per cent of the Holmes & Hallowell scale. I. C. C. Docket 25566, 192 I. C. C. 413; Ohio 13th Section case involving rates from mines in Ohio to destinations in the same state.

The Interstate Commerce Commission prescribed rates from Indiana mines to destinations in eastern Illinois for a comparatively short haul which are approximately 85 per cent of the Holmes & Hallowell scale; I. C. C. Docket 23922, 190 I. C. C. 743.

The Illinois Commission and also the Interstate Commerce Commission prescribed rates in Illinois for hauls up to 100 miles, which are slightly higher than 85 per cent of the Holmes & Hallowell scale, in Illinois Docket 19591, I. C. C. Docket 23130; 182 I. C. C. 537. The present rate [fol. 378] from Fulton County to Dixon of $1.50 is 84 per cent of the Holmes & Hallowell scale and the proposed rate of $1.55 is 87 per cent; the distance, 123 miles.

The docket 23922 scale rate for this distance is $1.55, or the same as that proposed. Docket 19591 scale, extended beyond 100 miles, at a rate of 7 cents per ten-mile block, produces a rate of $1.53. The rates prescribed by the Interstate Commerce Commission in the Ohio 13th Section case for this distance are approximately $1.78, Ex Parte 115 increase included.

The rate to Dixon complained of in the Dixon Chamber of Commerce versus C. & N. W. case, I. C. C. Docket 31295, should not be measured by depressed rates such as those from Fulton County to Linwood, Iowa, or Clinton, Iowa, which are 73½ per cent and 72 per cent of the H. & H. scale.

respectively. Rates from Fulton County to Linwood and Davenport were prescribed by the Interstate Commerce Commission in Docket 23130, when there were only 6 points of origin in the Fulton County district and the average distance was 98 miles. Today there are 27 points of origin in the Fulton County district and the average distance is 116 miles.

The rates to Clinton are held down by the rate to Davenport; Clinton, until recently, being intermediate to Davenport via other routes. The Interstate Commerce Commission prescribed rates to Iowa from Fulton County in [fol. 379] the Midland Electric case, I. C. C. Docket 26558, 232 I. C. C. 5, which are 90 per cent of the Holmes & Halloweil scale and in doing so refrained from prescribing specific rates to Linwood, Davenport and Clinton, because the then present rates were lowered.

I have another exhibit, No. 10, which is a statement showing the number of tons of coal forwarded from mines in Indiana, Illinois and western Kentucky during a ten-year period, January 1, 1932, to December 31, 1941; the figures being indicated upon the annual basis. At various destinations——

By Mr. Morgan:

Q. Off the record, could you explain that first caption on the second column there, "Except as otherwise shown." What does that refer to on Exhibit 10, on the first page?

By Mr. McElroy:

Q. You have got it headed "To Chicago," and then the first caption, "Except as otherwise shown." What is that "Except as otherwise shown"?

A. Well, you will notice at the top there it says to Illinois, and then they name Chicago and the Chicago district and the Peoria-Pekin district, and then columns B, C and D it shows tonnage to other destinations in Illinois.

Q. What other destinations are they?

A. Other than Chicago, Peoria-Pekin.

Q. All points in Illinois or are they selected points?

A. East St. Louis. East St. Louis is shown with St. Louis, Missouri.

The statement consists of ten pages, and the authority [fol. 380] for the figures contained therein is shown at

the bottom of the title page, page 1. It shows a separation of the commercial tonnage shipped to destinations in Illinois, Iowa, Missouri and Nebraska, and the tonnage for the destination territory involved in this proceeding is shown under caption "To Illinois, except — otherwise shown."

Mr. Wilkinson: Just a minute.

By Mr. Wilkinson:

Q. Do you mean as shown there, or is it included within that?

A. I mean it is included within that, Mr. Wilkinson; column B, C and D of each page. Tonnage from Atkinson, Illinois, is included in the movement from northern Illinois. A substantial part of the movement from the Wilmington, Illinois, mine is not shown in this report, as shipments handled by the Alton Railroad are not reported to the Association.

By Mr. Cardy:

Q. Those figures are shown somewhere else, are they not, Mr. Nelson, Wilmington mine, some other exhibit?

A. In my other exhibit I have shown the production——

Q. Yes.

A. In the commercial tonnage.

Included in the tonnage from mines in the Springfield district to Illinois destinations not otherwise specified is a large movement from mines on the C. & I. N. Railroad for the Commonwealth Edison Company plant at Chicago, [fol. 381] which is shipped by rail to Havana, Illinois, and by barge line beyond. In 1941 it amounted to approximately 2,000,000 tons. The statement does not include a large movement from Fulton County mines to Chicago, Ottawa, LaSalle, Illinois, Linwood and Dubuque, Iowa, which is handled by barge lines.

By Exam. Trezise:

Q. And does the tonnage to Chicago include the amount that moved via barge line also?

A. No, sir, it does not.

Q. It does not?

A. The barge tonnage that I mentioned a few minutes ago is included in B, C and D.

By Mr. McElroy:

Q. The figures except as otherwise shown?

A. Yes, except as otherwise shown; because the destination, in so far as the rail movement is concerned, is Havana, Illinois.

Mr. Vesey: May I ask just one question right there, just in point of fact?

Exam. Trezise: Yes, sir.

By Mr. Vesey:

Q. You mean, of course, by that, in so far as your shipments of coal are concerned?

A. That is from Springfield.

My last exhibit is a statement consisting of one page, Exhibit No. 11. It shows the average level of the suspended rates from all destinations in Illinois, Indiana and Western Kentucky to representative destinations in northern Illinois compared with the average level of present [fol. 382] rates from the same origin districts to representative points in the surrounding territory. It indicates that the present rate to comparative representative points, notwithstanding the fact that some of them, such as those to Chicago, Rock Island, Moline, Davenport and Clinton should properly be classified as depressed, are higher in level than the proposed rates to the representative suspended points.

This statement is a recapitulation of the information shown in Robertson's Exhibits Nos. 3 and 4. The method of ascertaining the average levels is explained at the bottom of the page. The origin districts are listed in the first column and the names of the representative suspended points are shown at the tops of columns 1, 2, 3, 4, 5, 6 and 7. The names of the representative comparative points are shown at the top of columns 8 to 14, inclusive.

By Mr. McElroy:

Q. These figures are not weighted average distances?

A. No, sir. Column No. 1 gives the total number of origins used from each group on the lump and fine coal regions. Column No. 2 is the total rate of lump and fine. Column No. 3 shows the total distance; column No. 4, the average suspended rate; column No. 5, the average dis-

tance; column No. 6, the Holmes & Hallowell scale for the average distance. Column No. 7 shows the percent that the average suspended rate is of the H. & H. scale rate that obtained. Columns Nos. 8 to 14, inclusive, contain [fol. 383] similar information with respect to present rates from these origins to the representative comparative points.

In all instances, with the exception of rates from Atkinson and Peoria, the suspended rates, or perhaps I should say the proposed rates are a lower level than the present rates to the comparative points. To illustrate, the rates from Wilmington, which is the point in the northern Illinois district that was selected for this comparison, it being the one that ships the majority of the rail coal, the average rate from Wilmington to the representative suspended points, proposed rate, is 79.1 per cent of the Holmes & Hallowell scale. The average present rate to the comparative points is 79.6 per cent, lump coal, and 77.9 per cent, fine coal.

By Mr. Morgan:

Q. Does that appear on that exhibit?

A. I beg your pardon, I got in the wrong column. The present rates to the comparative points for Wilmington, lump coal, are 83.3 per cent and on fine coal, 81.8 per cent. From the Fulton County district, the proposed rates are 72.1 per cent compared with the present rates to the comparative points of 79.6 per cent on lump coal and 77.9 per cent on fine coal.

The proposed rates from southern Illinois average 62.4 percent compared with the level of the present rates to the comparative points of 74.4 per cent on lump coal and 69 per cent on fine coal.

[fols. 384-385] From the Princeton-Clinton district, the proposed rates are 71.7 percent of the Holmes & Hallowell scale. The present rates to the representative comparative points are 76.4 per cent on lump coal and 74.8 per cent on fine coal. From the Princeton district, the proposed rates are 62.9 per cent of the scale compared to 69.6 per cent, the present rates on lump coal to comparative points, and 68½ per cent, present rates on fine coal to the comparative points. From the Booneville district, the proposed rates are 59.3 per cent of the Holmes & Hallowell

scale and the present rates from the Booneville district to the comparative points are 64.5 per cent of the scale on lump coal and 63.7 per cent on fine coal.

By Exam. Trezise:

Q. That is all on the exhibit there, is it not, Mr. Nelson?

A. Yes.

Q. Is there something else you want to say about it?

A. The only thing I want to say is to direct attention to the lower level of the rates that have been proposed, particularly from the lower Indiana districts, the Booneville rates are 59.3 per cent of the scale, the lowest rates we have proposed.

Q. That Booneville seems to be a little out of line from the others, doesn't it?

A. It appears to be. However, we are proposing to maintain the present adjustment so far as the rate relationship is concerned, so far as we can do so.

[fol. 386] The Witness: The rates which the carriers propose to establish and which are involved in this proceeding constitute an adjustment which is more in harmony with the rates from the same district to the surrounding territory, and if permitted to take effect will tend to eliminate, at least to some extent, the menace that these rates are to the general adjustment in this territory.

It is my belief, based on my knowledge of conditions that exist, which has been gained from years of experience in handling coal traffic, that the higher rates which the carriers have proposed will not jeopardize the interests of the Illinois, Indiana and western Kentucky operators or the dealers or consumers of coal, or cause any loss of traffic to other forms of competition for the carriers, but, on the other hand, will permit the carriers to obtain some additional revenue on traffic they are now transporting, and avoid an unnecessary sacrifice of revenue which would result if a general reduction in rates to points in the surrounding territory was made.

That is all I have on direct, except Witness Hamilton mentioned the fact that there had been no increase in the rates from the Fulton County district to Sterling, Illinois. This was caused by the necessity of holding the rate to Clinton, Iowa, as maximum. In other words, to avoid a violation of provisions of Section 4 of the Interstate Com-

[fol. 387] merce Act and Section 40 of the Illinois Commerce Commission Law.

Now, in the majority of instances where we—in fact, I think all instances where we have followed a uniform procedure in proposing increased rates, I mean by that a uniform increase in rates is because we could not do so without Fourth Section violations.

Mr. Vesey: Could that statement be read back, please?

(Record read.)

By Mr. Biaett:

Q. Mr. Nelson, is the reason why the—will you tell the Commission the reason why the carriers are proposing the increased rates at this time.

A. Well, we think that the rates are too low and are not bearing their proper share of the transportation burden, that they should be increased to the proposed level, which is more in harmony with the level of the rates to the surrounding territory. There is more or less competition at border points with a population, industrial development, business growth; and when this competition exists, the consumers who pay the higher rates must absorb the difference in those rates, the difference between the rates they pay and those that they pay in the territory that is involved.

Q. Well, Mr. Nelson, is there an outstanding order which requires you to either increase the rates to Rockford or reduce the rates to Beloit?

A. That is true.

[fols. 388-389] Q. And if you increase the rates to Rockford, is it also necessary, in order to comply with Section 4 of the Interstate Commerce Act and Section 40 of the Illinois Public Utilities Act to increase rates to these other destinations in northern Illinois?

Mr. Morgan: That is a legal question.

Mr. Stadell: It is a legal question. It is very leading.

Mr. Biaett: Well, Mr. Examiner——

Exam. Trezise: It is necessary to conform to the law.

Mr. Stadell: They have an alternative.

Exam. Trezise: They have an alternative; that is the law. Now, what was your question, Mr. Biaett?

By Mr. Biaett:

Q. My question was, could we comply with the order by increasing the rates to Rockford, Illinois, or is it necessary to increase the rates to numerous other destinations in northern Illinois in order to avoid Fourth and Fortieth Section departures?

A. That is correct. Many of the rates to points beyond Rockford in this territory apply via Rockford, and therefore to increase the Rockford rate, you would have a violation if you didn't increase the rates to the points beyond.

. . . . . .

[fol. 390] By Mr. Biaett:

Q. Mr. Nelson, are you familiar with the conditions in the northern Illinois points under suspension in this proceedings which surround the transportation of coal from the Illinois groups, the Indiana groups and western Kentucky?

A. Generally, yes.

Mr. Stadell: Now, what conditions——

Exam. Trezise: So far as they are affected by this 4th [fol. 391] Section provision and the provisions that might apply with respect to that. You are not talking about transportation conditions from a physical standpoint, are you?

Mr. Biaett: No, sir.

Mr. Stadell: That is a necessary part of the basis of his question; the physical manner in which these railroads operate and the routes over which they operate and the points through which they operate in reaching these destinations.

Exam. Trezise: Oh, the Examiner did not have that in mind. The Examiner had in mind whether or not he was asking what the difficulties of transportation were. Why, certainly you may ask him how the railroads run and where they compete, if that is what you are driving at. He is an expert on that.

Mr. Biaett: Well, that is all that I intended my question to include. That is from a rate and tariff standpoint.

Exam. Trezise: He knows that, do you not?

The Witness: Sure.

By Exam. Trezise:

Q. That is your business, isn't it?
A. Yes, sir, correct.

Exam. Trezise: But we are not going into difficulties of transportation over the mountains or through the valley.

By Mr. Biaett:

Q. Mr. Nelson, have the carriers filed petitions to secure relief from Section 4 of the Interstate Commerce Act and Section 40 of the Illinois Public Utilities Act in order to hold higher rates at Rockford than at other points in this [fol. 392] territory?
A. They have not.

Mr. Biaett: That will conclude.
Exam. Trezise: That is all?
Mr. Biaett: Yes, sir.

By Exam. Trezise:

Q. Mr. Nelson, just to have it a little clearer about this Exhibit 11, before cross examination, you have that exhibit divided into two sections, one, "To representative suspended points" and the other, "To representative comparative points," and in connection with that you refer to the Indiana-Illinois scale, in justification of the rates under that section, called the representative suspended points. That is true, isn't it?
A. I referred only to the Holmes & Hallowell scale, Mr. Examiner.
Q. You referred to the Indiana-Illinois scale and gave the docket number, which is—what is it, 292——
A. 23922.
Q. Yes.
A. I referred to that scale and I discussed rates from the Fulton County district to northern Illinois destinations.
Q. That is the point I am trying to get at.
A. And I stated, Mr. Examiner, that the Commission had prescribed this scale from Indiana mines to destinations in eastern Illinois for comparatively short hauls.
[fol. 393] Q. Well, would you use that scale any farther than Rockford? You spoke of Beloit, you know. I am trying to find out whether you would justify increases to Beloit by using that scale, the Indiana-Illinois scale. I just want

your view on it. I was wondering how you could separate the representative suspended points and then, over here, representative comparative points and in the comparative points you have Beloit?

A. Well, there are no increases in the rates from the Illinois points of origin to Beloit. There are some increases in rates from Indiana to Beloit. We have shown Beloit as a comparative point.

Q. You are not undertaking to cite the Indiana-Illinois scale in justification of the proposed rates to Beloit, is that right?

A. I think that would have been a proper scale to use. The rates we have proposed to Beloit are generally lower than that scale. I mentioned that scale to show that the Interstate Commerce Commission had prescribed rates into Illinois or into this territory, northern Illinois territory, which were approximately 85 per cent of the Holmes & Hallowell scale.

By Mr. Biaett:

Q. That scale applies for interstate transportation service?

A. Yes, sir.

Q. From Indiana to Illinois?

[fol. 394] A. That is correct.

Q. Isn't that correct?

A. Yes, sir.

Q. And you measured the intrastate rates from Fulton County to northern Illinois destinations by that scale, prescribed for interstate transportation?

A. That is correct.

Mr. Biaett: Pardon the interruption, Mr. Examiner.

Exam. Trezise: And you say that that Indiana-Illinois scale is higher? Did you say higher than the rate proposed to Beloit from Indiana? That is what you said.

I think I will not pursue that any more, but I would like you to think about that, Mr. Nelson. That has been quite a point in a number of these cases, and inasmuch as you intimated here that you might use that Indiana-Illinois scale up into Wisconsin, I was about to ask you, where would it stop?

The Witness: The rates that——

Mr. Kaier: Is your point, Mr. Examiner, how far could the scale be projected? As I recall it, it is a rather short point scale.

Exam. Trezise: Off the record.

(Discussion outside the record.)

Exam. Trezise: We will have a short recess at this time, before cross examination.

[fol. 395] (A short recess was taken.)

Exam. Trezise: Are we ready for cross examination?

Mr. Wilkinson: I have got a few questions I want to ask.

Exam. Trezise: All right, Mr. Wilkinson.

Cross-examination.

By Mr. Wilkinson:

Q. Mr. Nelson, did you ascertain from your direct examination that you do not consider Fulton County, Peoria, northern Illinois, as a part of the differential adjustment into the destination territory involved?

A. I stated that the rates from these districts to the destination territory were not related to the rates from districts in the southern part of the state, such as southern Illinois or Belleville, Springfield; no uniform relationship.

Q. Whereas, for the other districts in Illinois, there is a uniform relationship, based on differentials under southern Illinois?

A. Yes, sir.

Q. That are constant to all of the points of destination in this territory?

A. That is correct.

Q. Now, if that is true, Mr. Nelson, why did the carriers exclude, in their exhibits 3 to 5, inclusive, or 3 and 4, northern Illinois from a comparison of the whole and into Peoria [fol. 396] and Fulton County?

A. Well, the rates from northern Illinois vary. There is a variation in rates, and it wasn't possible, at least we couldn't find a way to do it properly, to show them as a group; so we showed them separately.

Q. You mean they vary as to a given destination?

A. Yes, sometimes, and they were not uniform.

Q. Well, is that not also true of the Peoria-Fulton County rates?

A. Well, the rates from Fulton County to these destinations are usually the same as—rates from all mines in the Fulton County district to a given destination; and the same is true with the rates from Peoria or the rates from Rushville, the rates from Fort Atkinson and Alpha, Victoria; but from the northern Illinois group, if you classify it as a group, you have got different rates from the various mines to some of these destinations. Therefore, you couldn't make the same kind of comparison.

By Exam. Trezise:

Q. Are you undertaking to distinguish there between short haul traffic and, well, you might call long haul traffic? Is that what you are driving at, when you say one is grouped and the other has individual rates?

A. That is correct. The rates from the districts we have been discussing, I think, are classed as being short haul rates.

[fol. 397] Q. Ordinarily, short haul rates do vary, based upon distance; that is a fact, is it not?

A. That is right.

Q. And is that the sort of distinction you had in mind here when you were describing the rate situation?

A. Well, distance has a bearing on the rate. What I was bringing out was the fact that we could not compare rates from the northern Illinois group as a whole because they were not uniform.

Exam. Trezise: Go ahead.

By Mr. Wilkinson:

Q. And for this purpose, you do not consider Alpha, Fort Atkinson, Victoria and Rushville as part of the Fulton County group?

A. No, sir.

Q. Is that correct?

A. That is right.

Q. In your exhibits and also in the exhibits introduced by Mr. Robertson you show from these northern—Fulton-Peoria and northern Illinois origins an interstate rate as well as an intrastate rate. Now, so far as Fulton-Peoria, northern Illinois is concerned, is there any significance in the interstate rate, as far as this case is concerned?

A. Well, the interstate rate was maintained by some of the roads, because they thought it was a more nearly proper rate, and it is usually a paper rate. It doesn't move any traffic.

[fol. 398] Q. As a matter of fact, no traffic moves from a mine in northern Illinois or Fulton County to any destinations in the involved territory within Illinois on an interstate rate, does it?

A. That is right.

Q. You have used as one of the comparative points, both in your exhibit and in the exhibits introduced by Mr. Robertson, Chicago, Illinois.

A. Yes, sir.

Q. Do you consider Chicago comparable with the points of destination involved here, the suspended points?

A. No, I do not.

Q. Why did you include it, then, in your group of comparable destinations?

A. We wanted to show the level of the rates to Chicago.

Q. Well, if it is not comparable——

A. Because Chicago has been—Chicago rates have been mentioned by the Commission in their decisions regarding the rates to this territory. It is stated that the rates to Chicago had some effect on the rates to this territory. We wanted to show the level of the Chicago rates.

Q. You just wanted to show it but you, yourself, don't think it is a comparable rate, is that it?

A. I think the rates to this territory can properly be higher than the rates to Chicago. The rates to Chicago [fol. 399] should be higher, if it was possible to make them that way.

By Exam. Trezise:

Q. And do you mean relatively higher, as the distance increases from Chicago?

A. Yes, sir. As the distance increases, the competition decreases. Therefore, the necessity of maintaining a low level of rates in this territory doesn't exist as the same necessity as causes the maintenance of the rates to Chicago.

By Mr. McElroy:

Q. Does the distance of the Burlington increase over the Chicago distance to the affected territory?

A. Well, I was talking about the rates from the East, when I said the rates increase as the distance increases.

Exam. Trezise: Proceed, Mr. Wilkinson.

By Mr. Wilkinson:

Q. Well, the rates from the East are not at all involved here, are they, Mr. Nelson?

A. Oh, no, but——

Q. Just taking the rates from Illinois, Indiana and west Kentucky, and leaving out the rates from the East, is Chicago comparable to Rockford, or consideration of the rates that we have under consideration here or in issue here?

A. I consider the rates to Chicago depressed rates.

Q. Oh, yes. Well, you said they are all depressed rates. Assuming that you consider all of these rates depressed, including the rate to Chicago, is it comparable?

A. Comparable with the rates that we have proposed? Or comparable with the present rates, do you mean?

[fol. 400] A. Well, comparable to either the proposed rates or the present rates or service or distance?

By Exam. Trezise:

Q. Well, you think the rate to Chicago is depressed than the others are depressed, is that right?

Mr. Wilkinson: I thought that would be the answer from the witness.

Exam. Trezise: I asked him that to help you out, Mr. Wilkinson.

The Witness: Mr. Wilkinson, the rates to Chicago are slightly higher in level than the general rates we are proposing into this territory.

By Mr. Wilkinson:

Q. And that is why you used it as a comparable point, is that right?

A. It illustrated the fact that the proposed rates are low in level.

Q. Now, you introduced as your exhibit, Exhibit No. 10, showing over a period of 10 years shipments from the various groups in Illinois, Indiana and I believe west Kentucky, to certain cities in Illinois and Iowa, and to the balance of

the State of Illinois, other than the cities shown, the balance of the State of Iowa, other than the cities shown. Could you explain to me the significance of that exhibit in relation to the rates to this area in northern Illinois that is involved in this case?

A. My purpose in submitting this exhibit was to show [fol. 401] the volume of the movement to this general territory and the trend of the traffic.

Q. Well, so far as this exhibit shows, either alone or in conjunction with anything else that has been introduced here, is there any way of telling whether any of the shipments which you show, as made from Danville, Illinois, if one pound of that coal went to any destination within the territory in northern Illinois involved in this case?

A. There is nothing in this exhibit that shows any specific destination.

Q. Well, to show that any of it went there.

A. If there was a movement from Danville to a point in northern Illinois involved in this case, if would be in the tonnage that I have reported.

Q. Yes, but so far as your evidence or the evidence of the witnesses who have preceded you is concerned, all of the coal that appears to have been shipped from Danville in 1941, 309,056 tons, may well have gone to destinations quite always removed from the territory here involved, is that correct?

A. That is possible. But if there was a movement to this territory, it would be included in these figures.

Q. And that same statement is true with respect to every origin group you have shown in your Exhibit No. 10?

A. Yes, sir, but there is another statement in Robertson's exhibit that does show the movement to some of the repre- [fol. 402] sentative destinations.

Q. That is to seven of the twelve representative suspended destinations you have shown?

A. Yes, sir, and that shows the movement classified as to origin districts for the year 1941 and the first six months of 1942.

Q. You spoke about something being a menace to the general adjustment in this territory. Now, what territory did you refer to in that statement?

A. The surrounding territory.

Q. The surrounding territory?

A. In Illinois and Wisconsin.

Q. You included in this territory Illinois, Wisconsin, Iowa, southeastern Minnesota?

A. That is a little far remote.

Q. That is far removed?

A. I mean the surrounding territory.

Q. All right. Now, what is this adjustment that you speak of, Mr. Nelson?

A. The low level of the present rates to the——

Q. Well, does that adjustment, as you use the word, include within it the definition, adjustment as between the groups in Illinois and the groups in Indiana to southern Wisconsin?

A. Well, I had reference principally to the level of the rates.

Q. To the level of the rates?

[fol. 403] A. The carriers are endeavoring to perpetuate the differential adjustment to this territory so far as they can.

Q. Well, now, the differential adjustment in southern Wisconsin and eastern Iowa and to Illinois, beyond this immediate territory, is not the differential adjustment, or the differences in rates, that now exist at Rockford, is it?

A. Not in all cases, no sir.

Q. Well, any cases?

A. There might be the same difference in rates, if that is what you mean.

Q. Now, Mr. Nelson, you well know, do you not, as between Brazil-Clinton, Indiana, and southern Illinois, in Illinois, to practically all points in southern Wisconsin, to practically all points in eastern Iowa, there is a difference of Brazil-Clinton over southern Illinois of 30 cents per ton in the rates? You know that, do you not?

A. Well, to many destinations the rates from Brazil are 30 cents less than southern Illinois, and they are on the same basis as Springfield; but not to all destinations, Mr. Wilkinson.

Q. Well, we will say to about 98 per cent of the destinations.

A. I wouldn't want to make any guesses as to the percentage.

Q. Now, I refer——

Exam. Trezise: Mr. Wilkinson, the relationship that you [fol. 404] are talking about in differential is relationship between Indiana and Illinois?

Mr. Wilkinson: That is right.

Exam. Trezise: And not between the Indiana groups themselves, is that right?

Mr. Wilkinson: That is right.

Exam. Trezise: That is right. Thank you.

Mr. Wilkinson: I was talking and I just used the two base groups of the two states.

Exam. Trezise: Proceed.

By Mr. Wilkinson:

Q. Now, at Rockford, except for the rates from mines on the Milwaukee, the differential as between Brazil-Clinton and southern Illinois is not 30 cents, is it, under the present rates?

A. At Rockford the rates from southern Illinois, $2.10, and at Springfield it is one dollar——

Q. No, I asked regarding Brazil-Clinton and southern Illinois, Mr. Nelson. I didn't mention Springfield.

A. The rates from Brazil-Clinton on the Milwaukee Railroad to Rockford, $1.80, and from mines on other railroads, $1.97.

Q. All right. Now, is it not a fact that whereas generally in southern Wisconsin and eastern Iowa, the differential, Brazil-Clinton under southern Illinois is 30 cents, that Rockford, with the exception of those mines on the Milwaukee, that the present differential is but 13 cents?

[fol. 405] A. Well, the difference between the rates from Brazil-Clinton mines on roads other than Milwaukee of $1.97 and the present rate from Princeton of $2.09, of course, is not 30 cents.

Q. I didn't ask you about Princeton, did I, Mr. Nelson?

A. I thought you said Princeton.

Q. No, I said southern Illinois to Rockford.

A. You want to know the difference between the Brazil-Clinton rate to Rockford——

Q. Yes.

A. Compared with southern Illinois,

Q. Yes.

Exam. Trezise: Well, that has been answered, hasn't it, Mr. Wilkinson?

Mr. Wilkinson: He hasn't answered it yet.

The Witness: Well, the difference between the Brazil-Clinton rate from mines on the Milwaukee and the rate from southern Illinois is 30 cents.

By Mr. Wilkinson:

Q. Yes, sir.

A. And from other mines in Indiana, it is 23 cents.

By Exam. Trezise:

Q. 13 cents?

A. 13 cents.

Mr. Wilkinson: Yes.

By Mr. Wilkinson:

Q. Now, is that a part of this general adjustment that you speak of that you are hoping to maintain and extend?

[fol. 406] A. We are trying to perpetuate the present adjustment, Mr. Wilkinson, and that seems to be—if the present adjustment is on the proper basis, then we are trying to perpetuate it in a proper manner.

Q. If it is on an improper basis, are you still trying to perpetuate it?

A. We are not trying to change it here.

Q. And you are not expressing any opinion, then, as to whether that adjustment of 13 cents, Brazil-Clinton under southern Illinois, to Rockford, is proper or improper, is that correct?

A. I see nothing wrong with the present adjustment, Mr. Wilkinson.

Q. You think that is proper?

By Exam. Trezise:

Q. Right there, wouldn't it be well to say, if you know why, why there should be that differential as to one railroad and a different differential as to the other railroads? Do you know about that, as to whether there is a justification for the differential of 30 cents with one railroad and 13 cents with the other? It seems to me quite a difference.

A. I know there is a difference, Mr. Examiner; but it has been maintained that way for many years.

Exam. Trezise: Proceed, Mr. Wilkinson.

By Mr. Wilkinson:

Q. How many years?

A. I don't know.

[fol. 407] Q. Well, don't you know the history of this rate, Mr. Nelson, to know that prior to 1930, when the Illinois Commerce Commission ordered a reduction in the rate from Illinois to Rockford, that the same differential of 30 cents applied from all mines in the Brazil-Clinton district under southern Illinois and had for many years prior to 1930?

A. 1930?

Q. Yes, sir.

A. I couldn't say. It has been this way for a long time. I do know that the Illinois Commerce Commission order reduced the rates from Illinois to Rockford 17 cents. As a result of that order, the Milwaukee Railroad reduced their rates from the Brazil-Clinton district to Rockford 17 cents.

By Exam. Trezise:

Q. Do you think the differential ought to be the same? Can't we approach this subject and get an answer on that? Have you sufficient facts in mind to enable you to give us an answer, why they have a different differential by some of the railroads and a different one on the others?

A. Well, Mr. Examiner, I don't know that I want to express an opinion on that.

Exam. Trezise: All right. Thank you.

By Mr. Wilkinson:

Q. Now, do you know of any reason, Mr. Nelson, why the differential as between Brazil-Clinton and southern Illinois at the compared point of Madison, which you used, should be 30 cents, Brazil-Clinton under southern Illinois, on all [fol. 408] railroads; whereas at Rockford, you are proposing to maintain a differential of 13 cents on all carriers other than the Milwaukee, and 30 cents on the Milwaukee?

Mr. Vesey: Off the record, if the Examiner please.

Exam. Trezise: Yes.

(Discussion outside the record.)

Exam. Trezise: Back on the record. The Examiner didn't want to press his question, inasmuch as he said that

he didn't want to express an opinion on it. If that is the conclusion that the witnesses want to give to the Interstate Commerce Commission, why, the Commission will handle it in the way it ought to be handled. I have no more questions on that.

Mr. Wilkinson: I was satisfied to leave it that way, that he didn't care to answer the direct question.

Exam. Trezise: You asked him another question.

Mr. Wilkinson: And I have asked him another question.

The Witness: The rates from Brazil-Clinton and Princeton or, I mean, Springfield to Madison, Wisconsin, are 30 cents less than those from southern Illinois.

By Mr. Wilkinson:

Q. I know they are. That wasn't my question, Mr. Nelson.

A. What was your question?

Mr. Wilkinson: Will you read the question to the witness, please, Miss Reporter.

(Pending question read.)

[fol. 409] The Witness: At Rockford we are proposing to maintain the present adjustment. From Milwaukee mines, the rate from Brazil-Clinton is 30 cents less than the rate from Illinois.

By Mr. Wilkinson:

Q. Is that the only reason that you can think of for having that anomoly of a narrower differential in a shorter haul than you have in a longer haul? Is your proposal to maintain the existing relationship at Rockford?

A. That is what we are endeavoring to do.

Q. I see, and that is the only reason you have to sustain that anomoly?

A. I don't believe I understand your question.

Q. Well, is the only reason that you can think of, as you sit there on that stand, for maintaining a differential as between the mines in Brazil-Clinton under southern Illinois of 13 cents at Rockford, while you have a differential of 30 cents at Madison, is the desire of the carriers to maintain at Rockford the existing rate relationship?

A. That is right.

By Exam. Trezise:

Q. Well, then, in that connection, isn't it ordinarily true in the establishment of differentials that a differential may even be greater to a shorter-distant point than to a farther distant point?

A. The differential be greater to a shorter distant point than to a further distant point?

Q. Yes, sir.

[fol. 410] A. Well, that might be. It might be less. There is not any uniform——

Q. I did not mean to complicate the situation or have any rabbits up my sleeve. Ordinarily, where the distances increase, the differential naturally decreases in making differential rates, isn't that true?

A. I think that is true, yes.

Q. At least they do not do the opposite, as in the illustration given by Mr. Wilkinson.

Mr. Wilkinson: Mr. Nelson——

Mr. Vesey: There was no answer to that question of the Examiner's.

The Witness: I didn't think it required an answer. What is it you want me to answer, Mr. Examiner?

Mr. Vesey: I am going to insist on an answer, if the answer——

Exam. Trezise: I will just withdraw the last question and let the other answers stand. I think you have answered my question, Mr. Nelson, and thank you.

By Mr. Wilkinson:

Q. Mr. Nelson, it being usual, as you stated to the Examiner, that the differentials for a shorter haul, if they differ at all from those for a longer haul be larger, why is it that you are now proposing for the first time to narrow the differential between the mines in the Brazil-Clinton district in [fol. 411] Indiana on roads other than the Milwaukee and southern Illinois from the existing differential of 30 cents to 13 cents?

A. We are not narrowing it.

Q. You are not narrowing it?

A. That is what it is today.

Q. Is it? Will you please look at the rates from southern Illinois to Beloit, from Brazil-Clinton to Beloit, in the

proper exhibit that Mr. Robertson has introduced here, and tell me if it is 13 cents or 30 cents today?

A. You were talking about the rates to Rockford.

Q. No, my last question was Beloit.

A. Oh, I beg your pardon. Well, we have an order to comply with in publishing rates to Beloit.

Q. Well, that order didn't say anything about reducing the differentials, did it, as between Brazil-Clinton and southern Illinois?

A. The proposed rate to Rockford is $1.95 from Milwaukee mines.

Q. $1.95?

A. Yes, sir.

By Mr. Biaett:

Q. You mean to Beloit, Mr. Nelson?

A. To Rockford, $1.95; and to Beloit, it is $2.10.

Mr. Wilkinson: Yes.

The Witness: A difference of 15 cents.

Mr. Wilkinson: All right.

The Witness: The proposed rate from the mines on other [fol. 412] roads in the Clinton-Brazil district to Rockford is $2.12, and to Beloit, $2.27, or 15 cents higher.

Mr. Wilkinson: All right.

The Witness: That is what we are endeavoring to do, is to increase the rates to Rockford 15 cents a ton and then observe a 15 cent spread in establishing rates to Beloit.

By Mr. Wilkinson:

Q. Mr. Nelson, I believe you testified that for a number of years you were the coal traffic manager of the C. B. & Q. Railroad and that in more recent years you are assistant fuel traffic manager, or fuel traffic manager?

A. That is right.

Q. Now, between those two positions you have been dealing with coal rates for something over seven years?

A. Correct.

Q. Now, you have heard, in the course of that seven years, about the relationship and differential relationship between the mine groups in Illinois?

A. Naturally.

Q. And you have heard about the relationship between the mine groups in Illinois on the one hand and the mine groups in Indiana on the other?

A. Yes, sir.

Q. Haven't you?

A. Yes, sir.

Q. And you profess to know something of that relationship?

[fol. 413] A. Yes, sir.

Q. Now, Mr. Nelson, with your knowledge of that relationship, can you answer why the carriers at this time chose to disrupt the existing differential as between Brazil-Clinton on the one hand and southern Illinois on the other of 30 cents per ton by reducing that differential to 13 cents per ton?

A. Well, I explained to you——

Q. At Beloit?

A. I explained to you why we did it. We are trying to maintain——

Q. Now, tell me the justification, from a traffic or transportation and a competitive situation that warrants your doing it.

A. The justification is the fact that we want to maintain higher rates at Rockford and we proposed increases in the Rockford rates of 15 cents a ton and applied the Commission's order in the Beloit case by increasing the rates or making the Beloit rates 15 cents higher than the rates to Rockford.

By Exam. Trezise:

Q. Well, isn't it a fact, then, in answer to his question, that you regarded the order of the Commission with respect to this 15 cent differential between Rockford and Beloit more sacred than the existing differential that has been maintained between southern—is it southern Illinois and Brazil-Clinton?

Mr. Wilkinson: That is right.

[fol. 414] The Witness: Mr. Examiner, you couldn't comply with the order in the Beloit case without disturbing the differential at either Beloit or Rockford, one of the two.

Exam. Trezise: That is correct, and that is the reason you did it, isn't it?

Mr. Wilkinson: Now, I just want to find out:

By Mr. Wilkinson:

Q. Mr. Nelson, were you with the C. B. & Q. Railroad, did you have anything to do with the publication of rates when the first order in the Fairbanks-Morse case was complied with by the carriers?

A. I remember when it was published, yes.

Q. Did you have anything to do with the publication of the rates to Beloit under that first order?

A. I don't think I did.

Q. You don't think you did?

A. I don't remember what it was.

Q. Was there any difference, Mr. Nelson, between the phraseology of the order in the first decision and the order in the last decision, which you say you are attempting to comply with, except with regard to the amount of the differential of Beloit over Rockford? In the first case it was 25 cents and in this case 15 cents. Was there any other difference?

A. I don't know. It is a maximum differential, if that is what you mean.

Q. Well, it was a maximum differential in both cases, [fol. 415] wasn't it?

A. Yes.

Q. All right. Now, what other difference was there between the orders except as to the amount of that differential?

A. I don't know as there was any difference in the orders.

Q. Then why is it, Mr. Nelson, that you could comply with the first order by maintaining the 30-cent differential between Brazil-Clinton and southern Illinois at Beloit, and in complying with this order, you cannot do so?

A. We think the rates to Beloit should be at least 15 cents higher than the rates to Rockford.

Exam. Trezise: Well, now, gentlemen, let's — off the record.

(Discussion outside the record.)

Exam. Trezise: We will have to adjourn now here to accommodate some of you people. We will resume this afternoon at 2 o'clock.

(At 12:17 o'clock P. M. March 23, 1943, recess to 2 P. M.)

[fol. 416] *Afternoon Session*

The hearing was resumed pursuant to recess.

2 o'clock P. M.

Exam. Trezise: All right, gentlemen, when you are ready, we will continue.

C. J. Nelson resumed:

Cross-examination (Con't.).

By Mr. Wilkinson:

Q. Mr. Nelson, when you referred to the menace to the general adjustment in this territory, did you by any chance have in mind the menace of breaking up the present adjustment in southern Wisconsin by projecting the situation that now exists at Rockford into southern Wisconsin? Was that any part of the menace that you thought of?

A. I had reference to the level of the rates in northern Illinois and the threat that this low level of rates will constitute to the general adjustment in the surrounding territory.

Q. Now, I notice that one of the comparable or comparative points is Janesville, Wisconsin. Are you familiar with the location of Janesville in relation to Beloit, Wisconsin?

A. Yes, sir.

Q. Janesville is just a few miles north of Beloit, is it not?

A. That is right.

Q. About 18 miles or 15 miles, something of the sort, just approximately, Mr. Nelson?

[fol. 417] A. I would say about 20 miles.

Q. Now, is there any justification in your mind, Mr. Nelson, for having a relationship between Brazil-Clinton, on the one hand, and southern Illinois, on the other, at Janesville, of Brazil-Clinton 30 cents per ton under southern Illinois, and a relationship at Beloit of Brazil-Clinton only 13 cents under southern Illinois?

A. What was the first part of the question?

Mr. Wilkinson: Will you read the question, Miss Reporter.

(Question read.)

The Witness: If you establish rates to Beloit 15 cents higher than the rates to Rockford, and you have a relationship at Beloit that is different than the one at Rockford, you have to disturb one or the other.

By Mr. Wilkinson:

Q. I was trying to get your opinion, Mr. Nelson.

A. My opinion is that the way we published the rates is the proper way to do it.

Q. I was trying to go a little further than that. As a rate expert, Mr. Nelson, I was trying to get your opinion on that situation, as a rate expert, whether or not as an expert, leaving aside what you are trying to do in this case, whether or not you consider that a proper adjustment, or what would make it proper?

[fol. 418] A. I consider that a proper adjustment.

Q. Do you consider it a proper adjustment to have all the rates from a given group to a given destination the same level, the same measure?

A. Do you mean by that, to have the rates from all of these groups to certain destinations on the same level?

Q. No. What I meant was to have all the rates from southern Illinois, for example, to Rockford all the same amount, $2.05 a ton or $2.10, whatever it should be?

A. Yes, I think the group adjustment is all right.

Q. And in doing that, you would ignore the differences in mileages between the various carriers serving origins in such a group, would you not?

A. Well, the rates should be established on the average mileage from the group. That is the usual manner in which they are published.

Q. Yes, but I am now referring to any differences between the mileages of carriers serving the group. You would only reflect that in the average distance from the entire group, is that correct?

A. Where there are different rates from a certain group via different routes, there may be reasons that justify those rates.

Q. Well now, I am looking at page 15 of the carriers' exhibit 3, showing rates to Forreston, Illinois. It is in [fol. 419] section 5 of that exhibit. Now, you consider that it is proper, do you not, that the C. B. & Q. should publish

a rate of $2.10 to Forreston for 401 miles, the same as the Illinois Central does for its haul of 328 miles?

A. Yes, sir.

Q. In other words, you don't believe that rates should be on a strict mileage basis?

A. I stated the average mileage from the group should be considered in establishing rates of that kind.

Q. Then why do you consider that it is proper in the publication of rates to Beloit that you should have a lower rate from mines on the Milwaukee Railroad than you would have from mines on the C. & E. I. Railroad?

Mr. Stadell: Mr. Examiner, this witness, as I understand it, has testified principally with respect to the rates from northern Illinois and Fulton County. He represents or is not testifying for either the C. & E. I. or the Milwaukee, and his railroad serves none of the Indiana mines.

Mr. Morgan: If the Examiner please, the question was addressed to the witness as an expert in rate matters, as I understood it.

Mr. Wilkinson: That is right.

Mr. Stadell: He doesn't make the rates for either the Milwaukee or the C. & E. I., as I understand it.

Exam. Trezise: That is all he needs to do, is to state [fol. 420] that he doesn't know anything about it, that he didn't fix those rates, and I think that maybe that would answer Mr. Wilkinson's question. I don't know. But I think you may pursue that question.

Mr. Morgan: Mr. Examiner, does that answer the question addressed to an expert, because I raise the question now, and because I have in mind certain questions which I will follow with.

Mr. Wilkinson: Off the record.

Exam. Trezise: Off the record.

(Discussion outside the record.)

By Mr. Wilkinson:

Q. Now, Mr. Nelson, if you remember the question, can you answer it?

A. Your question, as I understand it, is if I consider it proper to have two rates from the Brazil-Clinton group to Beloit, one lower than the other?

Q. Yes.

A. Under the conditions that exist, I think that is correct, yes, sir. We have two rates to Rockford and we are establishing rates to Beloit that are 15 cents higher than the rates to Rockford in order to conform to the decisions of the Interstate Commerce Commission.

Q. Well, what are the conditions applying from Brazil-Clinton that distinguish the situation there from the conditions that apply from southern Illinois, as between the [fol. 421] C. B. & Q., for example, and the Illinois Central?

A. I think, Mr. Wilkinson, you better ask some of the Indiana lines that question.

Q. Well, you don't know yourself of any conditions?

A. They are more familiar with the conditions than I am, and probably they can give you a more intelligent answer.

Q. You said that under the conditions that are existing you thought it was proper. I am just trying to find out what those conditions were that you had in mind in giving your answer.

A. Well, those lines that deemed it advisable to maintain different rates to Rockford, and when you conform with the Commission's order in the Beloit case and establish rates to Beloit that are 15 cents higher, you naturally have different rates to Beloit.

Q. Those are the conditions which you referred to in your previous answer?

A. Correct.

Q. Do you feel, you as traffic manager of the C. B. & Q. Railroad, that it is proper to take into consideration the interests of the shippers and the consumers when you are publishing rates?

A. Certainly.

Q. And to what extent did you take into consideration the interests of the shippers in the publication of these pro- [fol. 422] posed rates?

A. Well, as I stated——

Mr. Kaier: Are you talking about Indiana still, Mr. Wilkinson?

Mr. Wilkinson: I am talking about all of them, Indiana and Illinois.

The Witness: As I stated this morning in my direct testimony, we endeavored in so far as was possible to maintain the present relationship and rates to this territory by proposing a uniform increase. I think that is indicative

of the fact that we were considering the interests of the shippers when we did that.

By Mr. Wilkinson:

Q. I believe you said too in that connection that you had to increase some of these rates to avoid violations of the 4th Section of the Interstate Commerce Act.

A. I said in answer to Mr. Biaett's question, if we would increase the rates to Rockford it would be necessary to increase the rates to points beyond Rockford in order to avoid violations of the 4th Section.

Q. Also rates intermediate to Rockford?

A. No, not rates intermediate to Rockford. You wouldn't violate the 4th Section by maintaining lower rates at intermediate points.

Q. Take this point of Sterling, which is one of the rep- [fol. 423] resentative suspended points shown on Exhibit 2. Why did you have to increase or change rates from Indiana to Sterling in order to change the rates at Rockford.

A. We didn't. Sterling was in this general adjustment that we are proposing. Increasing the rate to Rockford was not the reason for increasing the rate to Sterling. We thought the rate to Sterling was a depressed rate, the same as the rate to Rockford.

Q. So as far as the town of Sterling is concerned, it has nothing to do whatsoever with your anxiety to comply with the order of the Commission in the Fairbanks-Morse case?

A. That is correct. We considered the rates at Sterling as depressed rates.

Q. Now, how about Amboy, another one of the representative points. The answer is the same at Amboy as at Sterling, that you just considered it depressed?

A. That is correct.

Q. Is Amboy intermediate to Rockford on any route from Indiana mines?

A. I think not, but it might be. There might be some rates that apply via Peoria that don't show on this exhibit. I would have to check the tariffs to make sure.

Q. Now, when you speak of the adjustment that exists in this territory, you don't mean any fixed or definite relationship, do you?

[fol. 424] A. I am speaking of the level of rates in this northern Illinois territory. I called it an adjustment be-

cause that is what it is, the whole thing. It is an adjustment in the rates to that territory.

Q. Now, is there any reason why to this territory there should be a constant relationship as between the Springfield group, for example, and southern Illinois, and not a constant relationship as between the Brazil-Clinton group and southern Illinois to these destinations?

A. Well, the rates from the lower Illinois groups to this territory have been related by orders of the Illinois Commission. I do not know of any order from the Interstate Commerce Commission that prescribed a definite relationship in the rates from the Indiana groups, one with the other, or between the Indiana groups and the Illinois groups.

Q. So that it is your concept that these relationships, this constant relationship of Springfield under southern Illinois was something that was fixed by the Illinois Commerce Commission?

A. That is my reason.

Q. As a matter of fact, did they not—or rather, did not that relationship exist for a long time prior to the functioning of the Illinois Commerce Commission?

A. Oh, yes. It was established many years ago.

Q. And it has been maintained generally since then?

[fol. 425] A. Generally, yes, sir.

Q. And until the Illinois Commerce Commission required the reduction in the intrastate rates in 1930, the relationship of Brazil-Clinton under southern Illinois to this territory was almost uniformly 30 cents per ton, was it not?

A. I can't answer the question.

Q. Just from a traffic and transportation standpoint, do you know of any reason that would justify a differential of 21 cents Brazil-Clinton under southern Illinois to Amboy for a difference in mileage of 75 miles, and a 30 cents differential Springfield under southern Illinois for a difference in mileage of 126 miles?

Mr. Stadell: Might I inquire if that last question of Mr. Wilkinson with respect to those differentials is based strictly on a consideration of the differences in mileage?

Mr. Wilkinson: My question?

Mr. Stadell: Yes.

Mr. Wilkinson: Well, I am asking him to tell us. There may be facts other than mileage that the witness knows about, that I don't know.

The Witness: We haven't changed the relationship, Mr. Wilkinson, in proposing the higher rates to Amboy. We have, as I stated before, endeavored to maintain the present rate relationship. Now, the difference in distance, Brazil-Clinton under southern Illinois, is approximately what you [fol. 426] have stated, 75 miles, and 127 miles.

By Mr. Wilkinson:

Q. Well, whether or not you are going to change it, do you consider it proper, and what makes it proper, if you do?

A. I think the rates are reasonable.

Q. Both rates?

A. Yes.

Q. And both rates being reasonable, that makes the relationship proper, is that the conclusion to be drawn from your answer?

A. We haven't attempted to change the relationship.

Q. Yes, I understand you are not attempting to change any relationship. Now, with that premise, I am still asking you your opinion, as a rate expert, if you consider it proper?

A. I think that is proper.

Q. And in like manner, would you say that at Dixon, Illinois, where the difference Brazil-Clinton under southern Illinois is 52 miles and your differential is 16 cents, and Springfield under southern Illinois is 126 miles with a differential of 30 cents, is that proper too?

A. I think the rates are proper. They are not unreasonable.

Q. And you think the relationship is therefore also proper?

A. Well, the relationship must be proper if the rates are proper.

Q. Would it be possible in your opinion for any rela- [fol. 427] tionship of rates to be improper?

A. Oh, yes.

Q. What might be some of the elements that one would consider in determining whether a relationship was proper or improper?

A. Well, the distance that exists between the various districts, transportation conditions. Those two are important things that should be considered.

Q. Now, you have read the decisions of the Interstate Commerce Commission involving the rates within Illinois and from Indiana to Illinois. You are familiar, are you not, with the fact that the Commission said that the transportation conditions within Illinois and from Indiana to Illinois are substantially the same?

A. I think I have read something like that.

Q. So that, then, based on your answer, the only difference we have then is mileage, the only difference left, is that correct?

A. I think so.

Q. Would you not think that rates should be made on some relation to distance, that is, the same differential for substantially the same distance in a general territory?

A. I think that as a general thing that is true, but there may be conditions that I am not aware of that justified different adjustments.

Q. So if there are any conditions that justify the exist-[fol. 428] ing relationship into this territory as between Indiana, on the one hand, and Illinois, on the other, as shown by your exhibits, you are not aware of just what those conditions are?

A. But we are not changing the relationship at Amboy or Dixon or these other points you have been talking about.

Q. I know you are not changing them. But as they exist, if there are differences in those relationships, you don't know the conditions that warrant those differences, is that correct?

A. I don't know the rates from Indiana there, so I don't know all the conditions that exist.

Mr. Wilkinson: That is all.

Exam. Trezise: Well, Mr. Nelson, you have said, as the Examiner understands it, that so far as these differentials are concerned, either Indiana or in relationship to Illinois, particularly, so far as you know distance is the fundamental or primary factor to be taken into consideration, and the second one, if there are other conditions you do not know of them?

The Witness: I may not know all of them, Mr. Examiner. Of course, the distance is one factor. Competitive

conditions is another factor. There may be other reasons bearing on the situation that don't show up and I don't know about. I realize that you can't establish rates on coal based on distance entirely. That hasn't been done, although distance is given consideration.

[fol. 429] Exam. Trezise: Well, when you get into that subject and mention that, do you not have in mind particularly the short haul rates as compared with the longer haul rates, or do you?

The Witness: Well, the rates that Mr. Wilkinson was talking about are long haul rates.

Exam. Trezise: They are long haul rates, yes, and if you concede for the sake of your answer, anyhow, that distance is a consideration, the question I had in mind was, so far as you know, distance is the one primary factor to be taken into consideration in connection with the rates from Illinois, in which you have a voice and have some consideration in establishing, in relationship to the rates from Indiana. I am asking you if distance isn't one of the primary factors.

The Witness: That is correct.

Exam. Trezise: Then I am going to ask you if it isn't the primary factor, if you feel that you know—at least you can give your own view on that.

The Witness: Well, if you are considering long haul rates. Now, when you compare long haul rates with short haul rates, then I don't know that you can say that, Mr. Examiner.

Exam. Trezise: Where you have a group adjustment and there is justification for a group adjustment, from Indiana and from Illinois to any given destination, would you say that distance is the primary factor that you take into consideration in making the rates from Illinois in relation to the rates from Indiana?

[fol. 430] The Witness: Yes.

Exam. Trezise: That answer is, yes?

The Witness: Yes.

Exam. Trezise: Thank you.

By Mr. McElroy:

Q. Mr. Nelson, what is the distance from southern Illinois to Janesville, the driving distance? It is shown on page 58 of Exhibit 3.

A. Southern Illinois to Janesville, the average is 422 miles.

Q. And the rate is 2.79 a ton?

A. Yes, sir.

Q. And what is the average distance from southern Illinois to Madison, Wisconsin?

A. It is 420 miles.

Q. And the rate is $2.90?

A. Yes, sir.

Q. In other words, the distance to Janesville is 2 miles greater than to Madison, but the rate to Janesville is 11 cents per ton less than the rates to Madison, is that right?

A. That is right.

Q. And as I understand it, you are using this southern Wisconsin adjustment to justify a change in the rates to northern Illinois?

A. Yes, sir, that is one of the reasons. Geographically, Janesville is south of Madison, but there are routes to Madison that don't exist in the rates to Janesville. That [fol. 431] fact no doubt is the reason why the average distance to Janesville is two miles greater than the distance to Madison.

By Mr. Kaier:

Q. Is it a fact also, Mr. Nelson, that Madison is in a large destination group?

A. Yes.

Mr. Morgan: What do you mean by a large destination group?

Mr. Kaier: And, Mr. Witness, what is the location of Madison with reference to the rest of the group? Is it at a near distant point from the mines or a far distant point with reference to the rest of the destination group?

The Witness: I think the north line of that group runs through Madison.

Mr. Kaier: That is all.

By Mr. McElroy:

Q. Well, if these compared rates are parts of the group adjustment, what weight can the Commissions attach to the exhibits, since they don't purport, as I understand, to

show the extent of the group adjustment, either as to the accepted territory or the compared territory?

A. These rates are representative rates.

Q. You want the Commission to take them as such?

A. We have selected ~~these~~ points as representative and ~~shown the~~ rates as representative points.

Mr. Stadell: Does that mean Madison was representative of the destination group in which it is located?

[fol. 432] The Witness: Yes.

Mr. Stadell: And likewise the other southern Wisconsin points that you have used as comparative points?

The Witness: That is the reason they were selected, they were representative.

By Mr. McElroy:

Q. Both in mileage and in tonnage?

A. No, they were selected because the Commission had approved rates to these destinations, and they were geographically located and thought they would be representative, not always, as to tonnage. We certainly wouldn't have selected Apple River from the standpoint of tonnage.

Q. As a matter of fact, you would have to do a little work in your southern Wisconsin adjustment before you start a readjustment in northern Illinois, won't you, if you are going to dwell on mileage?

A. Well, Wisconsin rates are much higher than the rates to Illinois.

Exam. Trezise: Does that answer your question. It is a fact that the rate to Madison and to Janesville were both $2.90, before this Fairbanks-Morse case about which we have heard so much in this proceeding. It is the Interstate Commerce Commission perhaps that is to blame a great deal for this reduction to Janesville, to the present $2.79, which took it out of the $2.90 class. Are those not facts?

The Witness: Yes, sir.

[fol. 433] Exam. Trezise: Maybe if Madison had been included in that complaint, is it conceivable in your mind that there might have been some different sort of adjustment, if the factor of distance, as you indicate, was the controlling and fundamental one in constructing these rates? Is that a fact?

The Witness: That is correct.

Mr. McElroy: If you examine the distances and rates to Fort Atkinson, Lake Mills, and Madison, you would find the same situation as we have just discussed with relation to Janesville, on the one hand, and Madison, on the other, in that the spreads in distances are not at all consistent with the spreads in rates.

The Witness: Well, I haven't examined them.

Exam. Trezise: Any further questions?

By Mr. Vesey:

Q. As I understand your testimony, Mr. Nelson, you really appear in two capacities, one as a rate expert, and the other as a fuel traffic expert?

Exam. Trezise: Be sure that you appear as either one of these. Do you?

The Witness: I don't understand his question; as fuel traffic manager of the railroad, I handle traffic.

By Mr. Vesey:

Q. Are part of your duties the making of studies with respect to the sources of production and the distribution of that production of coal moving over the lines of your railroad and competing lines?

[fol. 434] A. In so far as it pertains to traffic.

Q. In so far as it pertains to traffic?

A. Yes, sir.

Q. Now, I take it, that some time here you made a study with respect to the production of coal at the several origin groups, as shown in your Exhibits Nos. 8, 9 and 10, is that right?

A. Those are my exhibits, yes, sir.

Q. I say, you made a study, I take it, of that production and the distances reflected in that study, is that right?

A. I did. The first two exhibits, the information was taken from the Illinois coal reports, and the last exhibit, No. 10, the information was taken from the Illinois-Indiana Coal and Coke Committee reports.

Q. And in this study, when it came to your study with respect to production, you deemed it advisable to cover a ten-year period, in so far as the production from the several origin groups in Illinois and Indiana were concerned, is that correct?

A. Yes, sir.

Q. But when it came to the question of distribution of that production, I note from your Exhibit 10 that you chose to use only the years 1941 and part of 1942, is that correct?

A. Exhibit No. 10 is a ten-year period.

Q. Does that also embrace a ten-year period of distribution?

[fol. 435] A. Exhibit 10 was my exhibit. It consists of 13 pages and shows tonnage from all the groups in Illinois, Indiana, and western Kentucky.

Q. Now, is that the only study of distribution that you made, that is, the study that is reflected in your Exhibit 10?

A. No, there is another.

Q. Is there another distribution study that you made?

A. One of Mr. Robertson's exhibits contains a tonnage statement.

Q. Did you make that study or did Mr. Robertson make that study?

A. Well, the information was furnished to Mr. Robertson by the destination lines. The Burlington was one of the destination lines that furnished information regarding the shipments that terminated on its line.

Q. So that in so far as the study in Robertson's Exhibit 4 of distribution from either the Fulton County or the northern Illinois districts is concerned, in so far as the Burlington Railroad is affected, those statistics were furnished by you, that is, your road?

A. I furnished part of them, yes, sir.

Q. Why didn't you, when you were making this study, Mr. Nelson, make a study to determine the changes, if any, that have occurred in the distribution of coals produced in Illinois to the destinations in both the affected and the com-

[fol. 436] pared territories?

A. Well, Exhibit No. 10 shows that to some extent.

Q. It doesn't show anything, does it, with respect to whether or not there has been a decline or an increase in the distribution from any particular origin group to either the affected or the compared territory, does it?

A. The tonnage statement in Robertson's Exhibit No. 4 shows tonnage to comparative points as well as suspended points.

Q. Yes, I know, but I say, you didn't make a study with respect to the distribution of coals from the several origin groups in Illinois and Indiana to the destinations involved

in the suspended territory here as compared with the destinations involved in the compared territory, did you?

A. Only to the extent that is reflected in Exhibit No. 10.

Q. Only to the extent that is reflected in Exhibit No. 10?

A. And to the extent that it is reflected in this statement contained in Robertson's Exhibit No. 4.

Q. And that statement is shown there—in other words, that is the full gamut of any studies you made with respect to that problem?

A. That is correct.

Q. Have you at any time within the past two or three years made a study to determine whether or not the distribution of Fulton-Peoria coals in the northern Illinois district, and by that I mean the affected territory here, has [fol. 437] increased or decreased?

A. Exhibit No. 10 reflects the trend of traffic from the Fulton County field to all of the territories that are shown in that exhibit.

Q. But that exhibit shows nothing at all, does it, with respect to whether or not the Fulton-Peoria district coals to the affected territory in this proceeding has increased or decreased during the past ten years, does it?

A. Fulton County to Illinois?

Q. No, I said to the affected territory, Mr. Nelson. Is there any question as to what I mean by that?

A. Well, the tonnage to the affected territory is included in this tonnage shown on page 3, columns B, C and D, to Illinois, not otherwise shown.

Q. Now, will you just take the time to listen to my question and give me an answer.

(Question read.)

Exam. Trezise: But that does not indicate the increase or decrease to the affected territory, but merely indicates an increase or decrease to these other points. Now, is that what you are getting at?

Mr. Vesey: Exactly. I think it is as clear as anything can be in a question.

Mr. Kaier: Of course, it is clear on the exhibit.

Exam. Trezise: It is clear on the exhibit that way.

[fol. 438] Mr. Vesey: All it would take is just a simple yes or no answer and we could have an end to it.

Mr. Kaiser: How can it end before you ask any question about it?

Exam. Trezise: Go ahead, Mr. Nelson. What were you going to say?

The Witness: The tonnage to Wisconsin is shown on page 11——

Mr. Vesey: Mr. Nelson, did I ask you anything about Wisconsin?

The Witness: You said the affected territory and the surrounding territory, as I understood it.

Mr. Vesey: No. I said just the affected territory.

Exam. Trezise: All right. You have your answer, haven't you, Mr. Vesey, on that?

Mr. Vesey: I would like to get the correct answers from him.

Exam. Trezise: You would rather have it from him. I assure you that that is true.

The Witness: Mr. Vesey, all of the tonnage that Fulton County shipped into this affected territory is in these figures. Now, it doesn't show separately just what that tonnage is.

By Mr. Vesey:

Q. Do you know whether or not, Mr. Nelson, shipments from Fulton-Peoria district have increased or decreased to the affected territory in northern Illinois during the past [fol. 439] ten years?

A. No, I can't answer that question, excepting as shown here.

Q. Do you know whether or not shipments from that same origin group have increased or decreased with respect to the destinations in southern Wisconsin referred to as the compared territory?

A. This exhibit shows that your Wisconsin tonnages increased. We know that the tonnage to Wisconsin goes to the southern part of the state, and that is the territory these locations are in. I can't tell you——

Q. How do you know that——

A. Let me finish my answer. I can't tell you from this exhibit what specific tonnage has been shipped to each one of these destinations in Wisconsin that has been selected as representative for a period of years. I do not have that information available.

Q. You don't have that information available?

A. No, sir.

Q. Well, if you turn, for example, here to your Exhibit No. 10 at page 11 and address yourself to Fulton County, on the shipments to Wisconsin for the past three years, that shows a rather steady, marked decline of shipments to that territory, does it not?

A. To Wisconsin?

Q. Yes.

[fol. 440] A. From Fulton County?

Q. Yes.

A. It is the reverse. I would say it is an increase.

Q. Doesn't that show a decrease, 114,532 tons for the year 1939 to 102,420 tons for 1941?

A. Yes, but you go back farther than that and it shows an increase.

A. I asked you for the last three years.

A. I don't understand you.

Q. If you don't understand the question, Mr. Nelson, suppose we take time to read it back and get it straight.

A. I thought you said ten years.

Q. Now, in your testimony, you referred to, I believe, the 35 cent differential, Fulton County under southern Illinois, that existed in 1910, I think you gave it as the date. Then you referred to the 60 cents differential that is now in effect, Fulton County under southern Illinois, on shipments into Beloit and to Rockford, did you not?

A. I gave the difference in rates.

Q. Now, don't you know, Mr. Nelson, that in 1925, an agreement was reached whereby the differential at those destinations, Fulton County under southern Illinois, was 79 cents a ton?

A. It was not. A Beloit agreement was reached. It was 79 cents Fulton County under southern Illinois for a while.

[fol. 441] Q. Now, there came a time when that differential changed to the present differential, with successive changes—that final change was what, in 1933, was it?

A. Well, it is the date of the first Beloit decision, when we had to adjust the rates at Beloit to make them 25 cents higher than the rates to Rockford.

Q. Now, at the time that decision was reached, don't you know, as a matter of fact, the mines in the Fulton-Peoria district had virtually closed down, and that change came about solely by virtue of the fact that the Fulton-Peoria field as a field was considered a nonentity in the production of coal?

A. The production in Fulton County field in 1935 was not as great as it is today.

Q. I didn't ask you that.

A. The mines had not closed down.

Q. I am going back beyond 1935—1932, 1933, at the time that that case was under consideration, don't you know that as a matter of fact?

A. I know that the production in the Fulton County field prior to the development of strip mines in that district was not nearly as great as it is today, but it was not closed down.

Q. In other words, there was still something left, is that what you mean?

A. Oh, sure, there was production in the field, but not to [fol. 442] the extent as it is today.

Q. I think it is also part of your duties to inquire into and ascertain something with respect to the kind and character of coals that are produced in the fields in Indiana and Illinois, is that correct?

A. Well, I am somewhat familiar with the character of the coal.

Q. Do you then know, by virtue of that familiarity, Mr. Nelson, that considering Illinois coals, for example, that your high grade, your superior coal, so to speak, is produced in so-called southern Illinois district?

Mr. Stadell: Now, I object to that question, Mr. Examiner, first on the ground that this witness has not been qualified to testify with respect to the comparative qualities of the coal produced in any of these fields; and second, that even if he was qualified, the answer called for by the question is wholly irrelevant, immaterial and incompetent in this case, because it has nothing to do, the differences in the quality of the coal has nothing to do with the fixing of lawful freight rates by the Interstate Commerce Commission.

Exam. Trezise: The Examiner is going to rule that unless this witness shows more ability than he has already shown with respect to the knowledge of the quality of this coal and can discuss it to a sufficient detail to impress one on this record of his knowledge, we will have to exclude questions concerning something that he has only a hearsay [fols. 443-444] knowledge of.

Mr. Vesey: If that is what he has, just a hearsay knowledge, I certainly don't want an expression based on that.

The Witness: I am not a fuel engineer.

By Mr. Vesey:

Q. Let us approach it from another point of view, Mr. Nelson. In your studies of the distribution of coals produced in Illinois, have you found certain coals from certain origin groups having very limited, by that I mean, certain fields of distribution, as compared to other coals that have what might be termed an overall distribution?

A. Usually the coal of better quality has a greater distribution than the coal——

Q. And the coals from what origin group in Illinois have a greater distribution, Mr. Nelson?

A. I think southern Illinois has a greater distribution than any other coals.

Exam. Trezise: Than what?

The Witness: Than other coals in Illinois. However, the coals from other districts have been distributed over a wider area during recent years than they did before the coal was washed. The washing improves the quality of it.

. . . . . .

[fol. 445] Exam. Trezise: Let us not get past this point. Did you say southern Illinois had a greater distribution than what? I asked you that before. Now, Mr. Vesey said, than other groups.

[fol. 446] Mr. Vesey: Yes. He said other groups in Illinois.

Exam. Trezise: Is that true?

The Witness: I think so.

Mr. Vesey: There isn't any question about that, is there, Mr. Nelson?

The Witness: It has a greater distribution than any other Illinois coal that I know of.

Exam. Trezise: And than any other individual group?

The Witness: Yes.

Exam. Trezise: Or all others put together; now, which is it?

The Witness: No.

Exam. Trezise: Which is it?

The Witness: Than any other individual group.

Exam. Trezise: Than any other individual group. Thank you.

By Mr. Vesey:

Q. Now, Mr. Nelson, looking forward to the development and proposal of the rates that are under suspension, what study did you give to the several destinations involved in the affected territory and in the compared territory to determine the similarity of those destinations in so far as coal consumption is concerned?

A. Well, the studies reflected in these exhibits.

Q. That is the whole study?

A. And the general knowledge that I have acquired over [fol. 447] the years.

Q. The general knowledge that you acquired over the years?

A. Yes, sir.

Q. That is, of course, in your position with this railroad. Now then, for example, in order that we may have something specific in the record, would you just take a destination, such as Janesville, Wisconsin, in the compared territory, and Rockford, Illinois, in the affected territory, and tell me how, addressing yourself entirely with respect to consumption of coal, they compare one with the other?

A. During the 18 months period covered by this statement, the Fulton County coal into Rockford was a little more than 31,000 tons, and into Janesville 2500 tons.

Mr. Morgan: Off the record, what exhibit are you referring to?

The Witness: That is Section 8 of Robertson's Exhibit 4.

By Mr. Vesey:

Q. Is that taken from page 4 of Section 8?

A. Section 8, page 4 and page 5.

Q. Well, maybe your exhibit isn't the same as mine. My copy that I have here shows 950 tons from Fulton County.

A. Those are divided in six months periods, Mr. Vesey.

Q. Then it would be about 1900 tons in three periods, wouldn't it?

A. Wait a minute, maybe I made a mistake. To Janesville, yes, there was 1900 tons and to Rockford 31,000.

[fol. 448] Q. Now, is there any particular difference, Mr. Nelson, in so far as towns like that are concerned, with

respect to consumption of coal by receivers, that you know of?

A. I don't understand your question.

Q. Well, I mean by that, are there competing industries in those towns, for example?

A. Janesville versus Rockford?

Q. Yes.

A. Well, there are industries in both towns.

Q. Well, put it in another way: Is there substantial consumption of industrial coals, that is the fine coals, as you show them on your exhibit, in both towns?

A. Oh, yes.

Q. What is that?

A. There is a substantial consumption of fine coal at both points.

Q. In other words, if you look at both destinations, for the purposes of comparison, or speaking of one as typically representative of the other, you could take, could you not, Rockford as typically representative of Janesville, or you could take Janesville as typically representative of Rockford, could you not?

A. Well, of course, Rockford is a much larger place and the consumption would be greater than at Janesville.

Q. What is that?

[fols. 449-450] A. Rockford is a larger place, more industries at Rockford. Therefore, the consumption would be greater at Rockford than it would be at Janesville.

Q. Now, would there be any other difference that you can think of?

A. Well, there might be some industries consuming more coal than others.

Q. Well, do you know of any other differences than just that?

A. Those are all I can think of now.

Q. Now then, if that be true, Mr. Nelson, why didn't you make a study to determine whether or not the changing of the differential, so far as Fulton County was concerned, from the 79 cents which still prevails at Janesville, as against the 60 cents at Beloit and Rockford, resulted in a loss of markets to Fulton County producers of coal?

[fol. 451] The Witness: The differential at Janesville is 79 cents today.

Mr. Vesey: I can't hear the witness.

The Witness: The differential at Janesville is 79 cents today, and to Rockford it is 60 cents.

By Mr. Vesey:

Q. At Beloit it was formerly 79 cents and it is 60 cents today, is that right?

A. Beloit was formerly 79 cents, but Rockford never was.

Q. And Beloit is 60 cents now?

A. That is right.

Q. Now, I asked you, did you make any study, in view of that past history, to determine whether or not those differential changes resulted in a shift in the distribution of coal from one origin district to another, did you make such a study?

A. No, I did not. That happened several years ago.

Q. Did you make a study of it?

A. I made no study, no.

Mr. Biaett: Were you handling the coal-rates at the time those changes took place, Mr. Nelson?

The Witness: No, sir.

[fol. 452] By Mr. Vesey:

Q. Did you make any studies, for the purposes of this case, to determine what the distribution pattern was from the origin districts in Illinois, I mean as between Fulton County and southern Illinois, where the differential was 60 cents, 70 cents or 79 cents?

A. No, sir.

Q. And no studies of that kind were made for this case?

A. No, sir.

Q. Isn't it true, Mr. Nelson, if you are to review the decision in the Beloit case, that is the Fairbanks-Morse case, that in so far as Fulton County is concerned, that you could have complied with the Commission's order in that case by either increasing the rate from Fulton County to Rockford, decreasing the rate to Beloit, without changing the rates to any other destination in that territory? I say, only with respect to Fulton County coals.

A. I think that would have been possible, but it wouldn't have been a very orderly adjustment.

Exam. Trezise: You don't mean that it was possible to increase the rate to Rockford? Is that what you are saying?

The Witness: He said either way.

Mr. Vesey: Either way, do it one way or the other, to comply with the order.

Mr. Stadell: You mean the 1933 Fairbanks-Morse case or this one?

[fol. 453] Mr. Vesey: This one here, 251 I. C. C., the last case.

Mr. Stadell: Did you understand that question?

Exam. Trezise: You say you could have increased the rate to Rockford notwithstanding the state order against increasing that rate?

The Witness: As I understood his question, it was, could we comply with the Commission's order in the Fairbanks-Morse case in so far as it pertained to the rates from Fulton County by either increasing the rate to Rockford 15 cents or reducing the rates to Beloit 15 cents and not disturb the rates from the other districts. That is only in so far as it pertains to rates from Fulton County.

Mr. Stadell: Now, I object to the witness answering the question. Have you answered that question?

Mr. Kaier: Yes, he has answered it.

The Witness: I said, it might be possible.

Mr. Stadell: Well, I move to strike the answer of the witness, and I object to the question on the ground that the decision itself will speak for itself, and that isn't the way I understand the decision at all.

Mr. Vesey: I think you are under a misapprehension. I asked this question: If it were not possible under that order in that case for the carriers to comply therewith by either increasing the rate from Fulton County to Rockford or by decreasing the Fulton County rate into Beloit, with-[fol. 454] out changing the rates from Fulton County to any other destination, in so far as the Fulton County coal is concerned.

The Witness: I didn't understand your question that way.

Mr. Stadell: I will withdraw my objection.

Mr. Vesey: That is the question I was asking. Isn't that true?

The Witness: I understood your question to be about changing the rates from any other field.

Mr. Vesey: No.

The Witness: No, I don't think it would have been possible to do it, because you would have the same difficulty that we have experienced, 4th Section difficulty.

By Mr. Vesey:

Q. Now, will you tell me what that 4th Section difficulty is in so far as Fulton County coals are concerned?

A. The rates to points beyond Rockford could not be lower than the rates to Rockford.

Q. Now, just name one point where that situation would actually prevail, will you?

A. The rate from Fulton County to Freeport applicable via the Milwaukee Railroad, that applies to Rockford, and you couldn't hold a lower rate at Freeport unless you obtained relief from the Commission.

Q. I haven't checked that one. Is there any other destination?

[fol. 455] A. Oh, yes, there are others; any rates to points beyond Rockford apply via Rockford.

Q. Aren't your rates from Fulton County, when you go beyond Rockford, aren't they higher on your Fulton County coals when you are going north?

A. Freeport is west of Rockford.

Q. I said going north.

A. You said beyond Rockford. I understood your question to say beyond Rockford—any other destination?

Q. Yes.

A. I am telling you some destinations. We changed the rates to, one of them was Freeport, another one was Pecatonica.

Q. You are just picking out destinations between Rockford and Freeport, is that what you are doing, Mr. Nelson?

A. Those happen to be between there, and there are many others.

Q. Outside of those towns, are there any other destinations that would have resulted in a 4th Section violation if you had done what I suggested in my previous question?

A. It would be necessary for me to check the tariffs to find out what destinations would be involved.

Q. Did you make a check at the time to find out whether or not that could be done, or have you made such a check?

A. We deemed it advisable to follow the plan we have pursued in complying with this order.

Q. In other words, it wasn't so much a question of 4th [fols. 456-457] Section violations as it was the desire on your part to increase the revenue on this coal, isn't that right, Mr. Nelson?

A. Both.

Q. In so far as your 4th Section is concerned, on Fulton County coals, the only reference you have to destinations are between Rockford and Freeport, is that right?

A. No. I said there may be many others.

* * * * * * *

[fol. 458] By Mr. Bather:

Q. Mr. Nelson, at the opening of your testimony on direct you mentioned that the adjustment of rates on coal to the affected territory was intricate and complicated, which was one of the reasons why the proposal here was made and the rates increased. Now, does that increase that you propose change the intricate or complicated adjustment?

A. The plan which the carriers followed carried with it increasing the rates to each individual point the same amount from the various districts, thus preserving the [fol. 459] relationship that now exists in so far as possible. Now, the only way in which that has not been followed is where we had to make changes to avoid 4th Section departures. Now, where the rate from one district was increased 15 cents a ton, we endeavored to increase the rates from other districts to that point 15 cents a ton. Where the rate was increased 10 cents a ton or 5 cents a ton, we endeavored to increase the rates from other districts the same amount.

Q. There was no uniform increase made throughout the destination territory?

A. No, you couldn't do that, Mr. Bather, because of departures from the 4th Section. To illustrate, the rate to Dixon from southern Illinois could not be made higher than the rate to Chicago. Therefore, the increase at Dixon was 5 cents; but we endeavored to increase all rates to Dixon 5 cents. Now, the rate to Forreston could not be increased more than 10 cents a ton without causing a 4th Section departure, since the rate to Rock Island had to be held as maximum. And that Forreston rate affects the rate to Polo making to Polo the same increase as to Forreston. The Dixon rate affected the rate to Amboy. And so on all through the adjustment.

Where we have departed from the plan that I described has been because of 4th Section difficulties.

Q. Getting back to your testimony before the recess with reference to the long and short haul provisions of the Inter- [fol. 460] state and Illinois law, you mentioned points such as Freeport, Pecatonica, as related to Rockford. Now, those points are, Pecatonica, for example, on the North Western Railroad between Rockford and Freeport, isn't that right?

A. Perhaps it is. I thought it was located on the Milwaukee. I had in mind points on the Milwaukee Railroad beyond Rockford.

Q. That is what I am getting at. Now, does coal, for example, from Fulton County to Freeport in connection with the Milwaukee Road move through Rockford?

A. Yes, routing it via Mendota up through Rockford, to Freeport.

Q. Is that correct? Isn't Rockford north of Davis Junction, and isn't it a fact that coal to Freeport via the Milwaukee Road would move through Kittredge and not through Rockford?

A. I think not. The short distance would be through Rockford.

Q. Well, how could you get to Freeport in connection with the Milwaukee Railroad by going through Rockford? Would you take it to Rockford and then bring it back to Davis Junction, or would you take it north to Rockford and then take it to Freeport?

A. You may be right, Mr. Bather. I thought that line across there, looking at this map, was the Milwaukee Railroad.

Q. Now, take the line of the North Western to Freeport. That coal would move through West Chicago and through [fol. 461] Rockford to Freeport, wouldn't it?

A. Yes, routing from Fulton County mines would be via Sterling, I think.

Q. Well, nevertheless, you would have to take it to West Chicago and bring it back over to the Freeport branch of the Chicago and North Western Railroad, wouldn't you?

A. That would move through Rockford.

Q. Isn't it a fact you have a blanket 4th Section relief from the Interstate Commerce Commission, relieving you from the provisions of that section of the Act on traffic moving via circuitous routes?

A. That can be used where you have one route that is longer than another route.

Q. You have such a 40th Section relief order from the Illinois Commerce Commission, haven't you?

A. Yes, sir.

Mr. Vesey: I am not through with my cross examination.

Mr. Bather: Well, I just wanted to put that in. I think that is all on that point. I have some other questions I want to ask.

Exam. Trezise: All right, Mr. Vesey, go ahead.

By Mr. Vesey:

Q. Then coming back to the questions I asked you before the recess, under the order you are talking about, all that was incumbent upon the carriers to comply with that order was to make either the one adjustment or the other adjust-
[fol. 462] ment at Beloit and Rockford, without raising the Fulton County rates to any of the destinations in this affected territory, is that right?

A. We could have complied with the order by reducing the rates to Beloit.

Q. That is, you could have done it that way without affecting the rates to any other town in the affected territory, is that right, so far as Fulton County coals are concerned?

A. The rates to Beloit would, of course, have had to have been held as maximum at intermediate points. When you say without affecting the rates to any other town, I don't know that that is entirely correct.

Q. I mean without increasing the rates to any other towns.

A. We would not have had to increase the rates to Rockford.

Q. Or to any other destination in this affected territory, isn't that right?

A. We possibly would have had to reduce the rates to some intermediate point to Beloit.

Mr. Bather: What are those points?

The Witness: I would have to check the tariff to give you a correct answer.

By Mr. Vesey:

Q. Suffice it to say, you did not give enough consideration to that, to ascertain the destinations that would be affected, is that correct, Mr. Nelson?

A. We elected to comply with the order by increasing the [fol. 463] rates rather than reducing them, providing the Interstate Commerce Commission would permit us to do so.

Q. Now then, when you made these proposed increases, in so far as Fulton County coals are concerned, there was nothing that prohibited you or any other carrier from either maintaining the 79 cent differential Fulton County under southern Illinois, which prevailed at the northern point of Janesville, or following the principle that you enunciated in your answer to the Examiner of increasing that differential as against the compared base group, as you approached the origin group of the related group, was there?

A. If you would maintain a differential in the rates between Fulton County and southern Illinois of 79 cents at Beloit, you would reduce rates to Rockford and points intermediate to Rockford.

Q. Now, if you had done that, in so far as the Fulton County coals alone are concerned, you would have had to follow your principle of increasing the differential as you decrease in miles, in so far as the related groups are concerned, would you not, with the net result that your differential Fulton County under southern Illinois at Beloit, Rockford, would have been either 79 cents or greater, isn't that correct?

A. Well, we take the position that 79 cent differential doesn't necessarily have to be established at Beloit.

Mr. Vesey: Now, will you answer my question, please. [fol. 464] I will ask the reporter to read it back.

(Question read.)

The Witness: Well, I think that in establishing short haul rates, such as we have in this case, Fulton County to these points in northern Illinois and to Beloit, they should not be put on a differential basis, and therefore, your question as to following the principle of establishing differentials was not given consideration in this adjustment.

By Mr. Vesey:

Q. All right, if you follow that theory, the net result, so far as Fulton County under southern Illinois is concerned, and that is the base group that I am using, the differential that would have prevailed under such a rate adjustment at Beloit, Rockford, would have been 79 cents or greater, would it not?

A. If we had followed what adjustment?

Q. The principle you just spoke of.

A. We didn't follow any differential adjustment in proposing the rates we proposed.

Q. You are speaking of that as one group against another, are you not?

A. I am speaking as to the rate from Fulton County into northern Illinois. We consider those short haul rates and we didn't relate them specifically to the rates from other groups. What we did was to increase those rates the same amount as we did the rates from other districts.

[fol. 465] Q. When you talk about your short hauls and the differentials prevailing in short haul territory, that differential increases, does it not, as mileages decrease between compared groups?

A. When you have related groups. In this instance we didn't have related groups.

Exam. Trezise: You might tell us how far down you would go before you would meet a related group.

The Witness: Springfield, Illinois, versus Belleville—not Springfield versus Fulton County.

Exam. Trezise: Springfield versus the other groups, Centralia, Belleville, DuQuoin, southern Illinois, for example?

The Witness: Yes, sir.

By Mr. Vesey:

Q. And you could make the same comparison, Fulton-Peoria as against the northern Illinois district, couldn't you?

A. No, Fulton-Peoria and northern Illinois classify in the short haul territory.

Q. Both of them?

A. Yes, sir.

Q. Then if that be true, do you know of any reason why the northern Illinois, so far as those mines are concerned,

should be treated differently than the mines in the Fulton-Peoria district in this territory?

[fol. 466] A. We did not treat them any differently.

Q. I didn't ask you that, Mr. Witness. I asked you, do you know of any reason why they should be treated differently, and please answer my questions.

Mr. Kaier: Whether they should be treated any differently, and he said they didn't treat them any differently.

Mr. Vesey: I think everyone understands the question I asked him.

Exam. Trezise: Do you know of any reason why you should? You didn't, but do you know of any reason why you should?

The Witness: Well, the Illinois Commission prescribed rates from Wilmington to Rockford and from Fulton County to Rockford.

Mr. Vesey: Now, I ask the witness to be directed to answer the question, if the Examiner please.

The Witness: We had to comply with their orders when they were issued. The reduction in the rate to Rockford from Wilmington, as I recall it, was 47 cents a ton, and from Fulton County to Rockford it was 17 cents per ton. Therefore, we treated the northern Illinois rates differently than we did the Fulton County rates in complying with that order. Does that answer your question?

By Mr. Vesey:

Q. No. Now, I asked you, as an expert witness, do you know of any reason why when it comes to making rates that one district should be treated differently, when it comes to [fol. 467] this northern Illinois territory?

Exam. Trezise: Other than the order required or indicated you should do, than the way you did it, is that your idea?

Mr. Vesey: That is right. I am at least trying to get his opinion on that.

Exam. Trezise: Independent and outside of anything that may have controlled you with respect to the terms of the order, now, is there any reason?

The Witness: They are both short haul rates and they should be made in accordance with distance and other conditions that may exist, compliance with Commissions' or-

ders, whatever they may be. There is no definite relationship between the rates from northern Illinois and Fulton County or between the Fulton County and northern Illinois rates, and the rates from other groups in Illinois.

By Mr. Vesey:

Q. Now, let us see if we can't get something concrete. Will you look at Exhibit 4, the distance from the Wilmington mine to Dixon, Illinois, and the distance from Fulton-Peoria to Dixon, Illinois, and the rates that you propose, and explain to me why, in view of that last answer, you have that difference. You will find the Dixon rates and mileages on page 6, Section 5, and Peoria on page 2 of Section 3 of Exhibit 4.

The Witness: Page 2, Exhibit 3?

[fol. 468] By Mr. Vesey:

Q. Exhibit 4, Section 3. Page 6 of Section 3, I beg your pardon.

A. The mileage from Fulton to Dixon is 123 miles. The rate is $1.50.

Q. Your proposed rate is what?

A. $1.55.

Q. All right.

A. Now, what was the page number for the other?

Q. On page 6 of Section 5, the same exhibit, from the Wilmington mine.

Mr. Cardy: That rate to Dixon is the one under complaint in this case.

By Mr. Vesey:

Q. That exhibit shows, does it not, Mr. Nelson, that from the Wilmington mine to Dixon the distance is 128.4 miles; the present rate is $1.05 and you propose a rate of $1.10. Now, if that would be short haul territory, will you tell me, as a rate expert, what was the basis that you used for proposing rates with those differences?

A. We made the rate from Wilmington 5 cents higher than it was or than it is now. There was probably a reason for that.

Q. Well, is there any rhyme or reason that you know of, Mr. Nelson, for such rates as those in this territory?

A. Dixon is intermediate to Rockford. It is my opinion that Dixon is intermediate to Rockford via the Illinois Central Railroad from Wilmington, and therefore they have [fol. 469] maintained the same rate to Dixon that they have maintained to Rockford, $1.05 on state traffic, and we increased that rate 5 cents.

Q. And if you went right on to Rockford, assuming that is true, and made the same comparison, Fulton County against the Wilmington mine, you would have the same disparity there as you would to Dixon, would you not?

A. We had to comply with the Illinois Commission's order in publishing rates to Rockford.

Q. If you carried it on to the next step, to Beloit, you would have the same disparity, would you not?

A. The Interstate Commerce Commission prescribed rates from northern Illinois to Beloit in Docket 20912. I don't remember what the rate was. We had to comply with the order.

Q. I think if you will turn to page 3 of Section 6, Exhibit 4, you will find it. In the interest of time, I will state to you, your exhibit shows it is $1.40 for 126 miles, compared with your Fulton County proposed rate to Dixon of $1.55 for 123 miles.

A. That is correct.

Q. So that, as a matter of fact, Mr. Nelson, you can't justify, can you, the disparities on the basis they are simply short haul territory? I mean, that isn't a matter of concern, is it?

A. Well, the fact that the Commission prescribed a rate of $1.40 from northern Illinois to Beloit doesn't necessarily [fol. 470] mean that the proposed rate from Fulton County to Dixon is not proper.

Q. Now then, in the case of the rate to Beloit, that was an established maximum rate, was it not, for that distance?

A. That is my recollection, yes.

Q. If that be true, will you explain to me why, as a rate expert, and your committee as a group, representing carriers, propose at this time a rate of $1.55 for a haul of 123 miles, if you are giving as much consideration to Commission decisions as you have stated you gave on your direct examination?

A. Well, I referred in my direct testimony to other decisions of the Commision that I thought justified the proposed rate from Fulton County to Dixon.

Q. In other words, where the maximum rate prescribed is one you don't wish to follow, you just disown it, is that it, or leave it out of your considerations in your proposal?

A. I don't know that we disown it or anything like that, but it didn't apply to Dixon. Therefore, we didn't necessarily have to be governed by the order involving the rate from northern Illinois to Beloit.

Q. Well, let me put it the other way, Mr. Nelson. If the Interstate Commerce Commission was correct in its determination that $1.40 was a proper maximum rate for a mileage of 126 miles in short haul territory, I mean if that determination be valid, then wouldn't it follow from that, that [fol. 471] the rate of $1.50 which now prevails on Fulton County coal to Dixon, a distance of 123.8 miles, is at a level which is unreasonably high?

A. No, sir, it does not.

Q. Why doesn't it?

A. The fact that the Commission prescribed a rate of $1.40 from northern Illinois to Beloit doesn't necessarily mean that all rates in that territory for that distance has to be $1.40.

Q. But didn't you tell me this was a short haul territory?

A. Oh, sure.

Q. Now, do you know of any reason why you should have different rules applying to certain mines in short haul territory, when it is the same short haul territory, as apply to other mines in that territory?

A. As I stated in my direct testimony, the Commission prescribed rates from Illinois mines to Illinois destinations that are on approximately 85 per cent of the H. & H. scale basis. The carriers——

Mr. Vesey: Now, Mr. Nelson, just a moment. I will object, if the Examiner please. That is not the answer to my question, and I would like to follow some continuity in this cross-examination, if I can. I ask the witness to cooperate with me and we will save immeasurable time.

Mr. Kaier: If the Examiner please, I think it is an answer.

[fol. 472] Exam. Trezise: Read the question.

(Question read.)

Mr. Vesey: If you know of any reasons, I would like to have them.

The Witness: Well, the Commission prescribed a rate from northern Illinois to Beloit. The carriers——

Mr. Biaett: Excuse me, just a minute. That rate applied from a number of mines in northern Illinois, and not just from the Wilmington mine, which Mr. Vesey is using in his comparison.

Mr. Vesey: Mr. Biaett, I appreciate your testimony a lot, but we have one man on the stand.

Mr. Biaett: Just a minute. You asked the question, using the distance from one mine, when the rate prescription was from an entire group.

Mr. Vesey: Mr. Biaett, he can answer my question.

Exam. Trezise: You can answer his question, if you have any reason why different rules for the construction of rates to this short haul territory should be applied, I think you have some answer to that.

The Witness: Mr. Examiner, I don't think that the fact the Commission prescribed a rate from northern Illinois to Beloit compels the carriers to use that rate as a yardstick in each and every instance in making rates from Fulton County to destinations in northern Illinois. They would be equally [fol. 473] justified at least in using other decisions or other rates as measuring sticks. We consider the present rate from Fulton County to Dixon as a reasonable rate. We consider the proposed rate as a reasonable rate.

Exam. Trezise: Well, Mr. Nelson, what you mean to say, is this true, is that this denomination of different rules, there may be great variation to those rules that apply in a short haul territory, and if the rates come out different it may be that some variation of those rules that have been used in this short haul territory have been applied. Do you subscribe to that?

The Witness: Yes, sir. You can't always use the same yardstick or the same measuring stick. Conditions differ and you have to use your judgment.

By Mr. Vesey:

Q. All right, do you know of any conditions that warrant different treatment, so far as rates are concerned on coals moving from Wilmington mine to Beloit, and from Fulton County mines to Dixon?

A. As I explained, we had to comply with the Commission's order in establishing rates from northern Illinois to

Beloit. We may not have considered those rates as maximum rates ourselves, but we had to comply with the Commission's order.

Q. In other words, you might take from that answer, so far as practical reasons are concerned, you know of none?

A. Other than the Commission's order, that was the reason.

[fol. 474] Q. That is the only reason you know of?

A. I think an illustration of what this adjustment be— you have two hauls approximately the same length, and you have rates in effect, the Commission orders certain rates from one point of origin to another destination. Carriers oppose the petition for the reduced rates—maintain that the previous rates were reasonable. It doesn't necessarily mean that because the Commission ordered the rate from one point to one destination reduced, that you have to reduce the rate from the second point of origin to the second point of destination, or to use that rate as a yardstick throughout the entire territory. They have just as much right to use other yardsticks. Now, the fact that the rate from Fulton County to Dixon is not unreasonably high in level indicates that it is not an unreasonable rate.

Q. Did you hear my question?

A. I heard your question. I am trying to answer it.

Q. Don't you know that your answer is not an answer to my question, Mr. Witness?

A. Well, I answered it two or three different ways. I don't know what way you want me to answer it.

Q. I asked you if you knew of any reason for making a distinction. Are there any other reasons?

A. Yes, the Commission's order in the Beloit case is a reason.

Q. Now, you gave that. Now I am asking you, as a rate [fol. 475] expert, do you know of any practical reason for making a distinction?

A. I don't know of any other reason, other than that. I think that is a sufficient reason.

Q. Now, on the basis of your last answers here, Mr. Nelson, and going back to the established differential, Fulton County, under southern Illinois, at Janesville, and then coming back toward the Fulton County mines, can you tell me of the reasons that exist or reasons that you know of why that differential of 79 cents at Janesville as you come to

Beloit, down to Rockford, should not be either 79 cents or greater?

A. You want to know why it was changed?

Q. No, I want to know if you know of any reasons why it should not be 79 cents or greater.

A. I don't know why it should be 79 cents.

Q. I asked you, on the assumption that the 79 cents at Janesville is correct, do you know of any reason why as you approach the origin group, that differential should not be the same or greater?

Mr. Biaett: I object to that question, in so far as it relates purely to differentials, Fulton County under southern Illinois, and not to the level of the rates from Fulton County as compared to the level of the rates to destinations in Wisconsin.

Exam. Trezise: Mr. Biaett, you can bring that out very well by questioning Mr. Nelson. I think Mr. Nelson can [fol. 476] answer that question.

Mr. Biaett: Well, it is purely a differential proposition. It has nothing to do with the issue which Mr. Nelson attempted to prove on his direct testimony.

Mr. Stadell: It isn't involved in this case at all, Mr. Examiner. It is involved in the complaint in Docket 28888, which is not now being heard.

Mr. Vesey: Oh, if the Examiner please, it is involved.

Exam. Trezise: If the differential, Mr. Nelson, to Janesville is 79 cents, do you think it should be less than that to points that are a shorter distance, like to Beloit? That is the question.

Mr. Vesey: That is it.

The Witness: I think, Mr. Examiner, the present adjustment to Beloit or to Rockford, or the proposed adjustment is a reasonable adjustment. I see no reason for changing it.

By Mr. Vesey:

Q. Now, will you answer my question, or the Examiner's question?

A. The differential, applying the rate to Janesville, was not prescribed by the Commission. It is a voluntary adjustment on the part of the carriers that was approved by the Commission, as they let it go into effect, and it doesn't necessarily mean you have to use that differential as a yardstick to Beloit or Rockford.

Q. Mr. Nelson, I asked you to assume——

[fol. 477] Exam. Trezise: Well, it is the wrong sort of a principle, Mr. Nelson, isn't it, in rate making, generally? This is the same question the Examiner asked before, and we are right back where we started, only this is a specific proposition, that ordinarily differentials are greater for the shorter distances than they are for the longer distances, when group adjustments are taken into consideration. That is the fact, isn't it, Mr. Nelson?

The Witness: Generally. But here is a case where we are comparing, in my opinion, short haul rates with long haul rates, comparing short haul rates that are not differentially related with long haul rates. Now, when you get up into Wisconsin farther, why, you can properly classify the Fulton County rates with long haul rates.

Exam. Trezise: Then you think it is all right as it is, because the rate to Beloit, for example, is a so-called short haul rate?

The Witness: That is right.

Exam. Trezise: And the rate to Janesville, for example, falls into a class of possibly you might call it a long haul rate or a group adjustment, and you think that your explanation was, as the Examiner understands it—we have got to have some answers here—that it is all right?

The Witness: You have got to draw a line somewhere, Mr. Examiner.

[fol. 478] Exam. Trezise: Well, then, it is all right?

The Witness: I think it is all right.

Mr. Vesey: Now, what is all right?

The Witness: The present adjustment.

Exam. Trezise: The Examiner understands that it is all right to have—well, I can take your illustration—to have a 60 cent differential to Beloit, southern Illinois over Fulton-Peoria, as compared with a 79 cent differential southern Illinois over Fulton-Peoria to Janesville. That is what the Examiner understands. Does that answer your question?

Mr. Vesey: I want to get from this witness just one answer, if I may, that is directly in answer to a question, and that is this:

By Mr. Vesey:

Q. Assuming the differential, Fulton County under southern Illinois at the northern point of Janesville, assuming that differential is a proper differential, do you know of any reason why as we approach the origin group, say Beloit, Rockford, as you come down, that that differential of 79 cents should be that or higher?

Mr. Biaett: Mr. Examiner, the witness stated at least ten times as you get back toward Fulton County you have no differential relationship.

Exam. Trezise: The Examiner doesn't understand your question exactly. Now, the facts, as I understand it, as developed here, is that the rate to Beloit is in the nature of [fol. 479] a short haul rate and the rate to Janesville is in the nature of a long haul rate, in the conception of Mr. Nelson, and that there is a difference in the method of making rates, and that, therefore, it is all right to have it the way it is.

By Mr. Vesey:

Q. In other words, Mr. Nelson, you do not subscribe to the principle as enunciated by the Examiner here, that as your mileages decrease, the differentials—I am talking now hypothetically—the differentials should decrease? You don't subscribe to that theory?

A. Not when you are dealing with short haul rates, no, sir. The differential which applies at Janesville isn't a general differential that exists in Wisconsin. There are numerous other differentials up there that you might use as a yardstick in measuring the differential to Beloit, besides Janesville.

To illustrate the differential, if you want to call it that, at Madison it is 61 cents. Now, that is beyond Janesville. I could pick out some more points up there that have different differentials.

Exam. Trezise: There is not much sense to those differentials, is there?

Mr. Vesey: I was trying to establish that fact, if the Examiner please. I don't know how I am going to do it, but I think eventually we might arrive at it.

Exam. Trezise: Can't you establish the fact the differ- [fols. 480-481] entials are at variance, and you have already

established that Mr. Nelson thinks it is all right the way it is.

Mr. Stadell: Whether there is any sense to them or not, is a matter of argument after you have established the facts.

The Witness: Mr. Examiner, there was no doubt some reason for that, what you call, hodge-podge differential adjustment up there. If you will read the announcement that was made by the Commission at the time the rates were established, the agreement was published in a notice, that they had some strings tied to it, a minimum rate of $1.90; to observe further minimum present and suspended rates, whichever was lower. Now, there must be some reason. I can't recall what those reasons were.

By Mr. Vesey:

Q. In other words, you don't know what those reasons are?

A. That was a long time ago.

Exam. Trezise: We will adjourn until 10 o'clock tomorrow morning.

(At 5 o'clock P. M. March 23, 1943, adjourned to March 24, 1943, at 10 o'clock A. M.)

[fol. 482] Morrison Hotel, Chicago, Illinois,
March 24, 1943.

Met, pursuant to adjournment, at 10 o'clock a. m.

Before R. N. Trezise, Examiner, Interstate Commerce Commission. F. B. McElroy, Illinois Commerce Commission.

APPEARANCES:

As heretofore noted.

PROCEEDINGS

Exam. Trezise: All right, gentlemen; when you are ready, we will begin.

C. J. NELSON, resumed:

Cross-examination (Cont'd).

By Mr. Vesey:

Q. Mr. Nelson, I believe last night you testified with respect to certain differentials to the affected territory, and you said that because of this being short haul territory there were no recognized differentials from the Fulton County fields to the destinations involved; I take it from that answer that in so far as the comparative rates are concerned to these destinations you are making a technical distinction between differentials and differences in rates; is that right?

A. Differential is uniform difference in rate, and differs [fol. 483] from differences to the extent the differences vary.

Q. So that in this short haul territory, in speaking of the variations, I take it we have to talk of them from the point of view of differences in rates from point to point; that is, as between any two origin groups—at the same destination.

A. Well, if you were comparing one rate with another, of course it would be a difference.

Q. Now will you please tell me, with respect to these Fulton County coals, the limits of this short haul territory, in your opinion, in terms of miles; in other words, so I may have the breaking point following your testimony, between that area and where we have recognized changes, differentials, uniform basis from the Fulton County group and that territory where we have these point to point rates.

A. Well, I would say the short haul territory exists in northern Illinois up to the Wisconsin state line; and then between that line and farther up in Wisconsin there should be some grading of differentials or differences; we get into the differential territory. I think the fact that in the southern part of Wisconsin there are so many differences in rates, Fulton County versus southern Illinois, illustrates the necessity of following a plan of that kind.

Q. In other words, I take it, then, putting it in terms of specific miles that answer that the limit of the short haul territory going to the north would be somewhat in the [fol. 484] neighborhood of 175 miles from Fulton County.

A. Well, I don't know how far it is to the state line.

Q. Don't you have any definite idea as to where that breaking point should be?

A. Well, I just explained that I thought——

Q. I mean in terms of miles, about what it should be.

A. I don't know how far it is——

Q. Well, assuming, Mr. Nelson, that we are desirous here of getting rid of this hodge podge of rates—where, in your opinion, should this limit be; that is, where you break from short haul to that territory where we are going to have definite differentials, uniform differentials, a definite grade?

A. Well, I just explained my views.

Q. Well, I mean in terms of miles, about where should it be?

A. The average mileage from the Fulton County group to Beloit is 171 miles; Beloit is on the state line.

Q. Would that be a good point, in your opinion, to have the differentials between the short haul and the uniform differential territory?

A. Yes, I think so; you would have to maintain the same diffential at Beloit, the same difference, you might say, at Beloit that you maintain at Rockford, if you make the Beloit rate 15 cents higher than Rockford.

Q. So that would be a breaking point there?

A. You understand, Mr. Vesey, that prior to this time [fol. 485] it has been the position of the Fulton County operators that their rates should not be related to the other rates. They have taken that position before.

Q. I do not want to get off on that tangent now; but since you raise that question——

Exam. Trezise: Have that a little clearer, Mr. Vesey; breaking point, what do you mean?

Mr. Vesey: Breaking point between the short haul territory, where we have point to point rates, and territory where we are going to have uniform differentials.

Exam. Trezise: You had in mind that that was the initial point where the differential would begin?

Mr. Vesey: That is what he is telling me.

Exam. Trezise: Thank you; I am sure that makes it clearer to my mind.

By Mr. Vesey:

Q. Now, your own terms of the short haul territory, as I view it, what you mean is that is an area around the origin

group that would have a circumference of approximately, or a radius of 171 miles, generally speaking.

A. I said the distance to Beloit, on the state line, is 171 miles.

Q. Wouldn't this short haul territory have a uniform range from the origin group in all directions, should it not?

A. I would consider northern Illinois short haul territory.

Q. So then it would apply to the northeast; now, should [fol. 486] it not apply in all directions around this origin group, in so far as your short haul territory is concerned?

A. Of course, the rates involved in this proceeding do not include all of northern Illinois rates.

Q. I know that; I am just getting your idea of short haul territory; I say, should it not circumscribe an area rather uniform, in so far as radii are concerned?

Exam. Trezise: You mean from the Fulton group?

Mr. Cardy: You are talking now, Mr. Vesey, from Fulton?

The Witness: That is right.

Mr. Vesey: That is right.

The Witness: As I understand your question, you are asking me if short haul territory should extend 171 miles in each direction from Fulton-Peoria.

By Mr. Vesey:

Q. I am asking you if that territory should not have a circumference, so to speak, with approximately the same radials in each direction; now, you took one of them at 171 miles; I am asking you, shouldn't the territory be as sort of a ball, when you are up looking down?

A. I do not understand your question.

Exam. Trezise: May I inquire there, Mr. Nelson, you have already said, or have you, that you thought that from the Fulton-Peoria group to northern Illinois was short haul territory; didn't you say that?

The Witness: Yes, sir.

[fol. 487] Exam. Trezise: That is what he said one time; now you are trying to get him to say that is not true, or that there are some distances that are more than 171 miles, or 171 miles from Fulton-Peoria, in northern Illinois, that is not short haul territory.

Mr. Vesey: No, I want to find this out, if the Examiner please; whether in his theory of rate making, this expert

witness, for instance, we have short hauls now going to the north and northeast with a radius going to Beloit of 171 miles,—whether or not short haul territory as such with respect to this production group should not be a rather uniform circumscribed territory with respect to this origin group.

Exam. Trezise: All right, Mr. Nelson; answer that.

The Witness: I don't think you can bow right to the line, 171 miles in each direction.

By Mr. Vesey:

Q. I do not mean 171 miles; it might be 170 in one place, and let us say 200 in another; but it would be a fairly uniform radial area with respect to group, should it not?

A. I don't know how I can explain it any clearer than I did.

Q. I say, should it not be rather uniform?

A. I classify the rates from Fulton County to northern Illinois as short haul territory.

Q. Mr. Nelson, that is not my question; I asked you, should not that territory be rather uniform?

[fol. 488] A. I do not want to restrict it to any certain mileage.

Q. I do not care about the 171 miles; I am not asking you that; I am asking you as to the uniformity of the area.

A. I do not understand what you mean by uniformity, unless you restrict the mileage.

Q. That is too deep a question?

A. I do not understand your question.

Q. What is it you do not understand?

A. You want me to restrict it to mileage, and you say not; I have already said I consider the rates from Fulton County, Illinois, as short haul rates.

Q. Let me ask you again: shouldn't the territory embraced within that area described as short haul by you be an area with a circumference of approximately the same radials in distance from the origin groups in each direction?

A. I do not think you can do it that way, Mr. Vesey.

Q. You do not think you can do it that way?

A. No, sir.

Q. What is wrong with our describing a territory from the Fulton County group just that way?

A. Well, you might have some distances in northern Illinois that were greater than 171 miles; you might have

some that were less, much less; I don't think you can confine it to any certain distance.

Q. Is that the only objection you have to that proposition? [fol. 489] A. I really don't understand your question.

Mr. Vesey: All right.

Mr. Stadell: We understand that Mr. Vesey is advocating that now as a proposition?

Mr. Vesey: I am advocating nothing; I am just trying to cross-examine the witness, to find out what his views are.

By Mr. Vesey:

Q. Now, in a 13th Section *proceeding such as this* is, shouldn't we inquire, in determining whether or not any intrastate rate was discriminatory not only as to the rates across into one state but the rates across into other states, if such there be, to points of equal distance away, to determine whether or not a change in the intrastate level, in order to come under your theory, alleviating of discrimination in some directions, to ascertain whether or not that would bring about discrimination in another direction, into another state.

A. I do not understand that question.

Q. Maybe I can simplify it here: Assuming that it were found the intrastate rates were discriminatory against interstate rates on movements in this case to Wisconsin, but change the rates in Illinois to remove that discrimination would result in a discrimination against interstate movements, or against movements to destinations in Iowa; is it your thought that the change should be made, regardless of its effect in Iowa, in order to remove the discrimination in Wisconsin?

Mr. Biaett: Mr. Examiner, is Mr. Vesey's thought that [fol. 490] discrimination does exist as to Iowa?

Mr. Vesey: I am just asking the question.

Mr. Biaett: There must be some basis to the question.

Mr. Vesey: There is a basis.

Mr. Biaett: The basis is not in the record as yet.

Mr. Vesey: That is right.

Exam. Trezise: Well, if Mr. Nelson knows what he ought to prove in a 13th Section case as to that question, he can answer it, unless—do you know what we have to prove in a 13th Section case, to constitute a violation of the Interstate Commerce Act?

The Witness: You have to show that the preference would produce the rates that are in the proceeding here, compared with the rates to interstate points.

Exam. Trezise: Well, do you not sometimes leave it to your lawyer to determine what you have to prove in a 13th Section case, rather than having a rate man testify as to what the law is and what constitutes a violation of the 13th Section?

The Witness: I would think so.

Exam. Trezise: Mr. Vesey asked Mr. Nelson questions concerning what the facts are as to the rate situation.

Mr. Vesey: All right, Mr. Nelson: Are you acquainted with industries at Dixon, Illinois?

The Witness: To a limited extent. Dixon is not served [fol. 491] by my railroad; I know something about the industries there.

By Mr. Vesey:

Q. It is one of the representative points?
A. Yes, sir.

Q. Selected by the carriers?
A. Yes, sir.

Q. You are one of that committee selecting it?
A. Yes, sir.

Q. Are you acquainted with the competition between industries at Dixon, let us say, and industries at LaSalle, Illinois?

A. I know that there is a cement mill at Dixon, and there are cement mills at LaSalle.

Q. How did you happen to know that?

A. Well, I told you I was familiar with the industries at Dixon, to some extent.

Q. Is that because in so far as the rates are concerned, it is very important to know that fact?

A. Well, when you have been in touch with coal traffic in this territory for a number of years, you know.

Q. In other words, the minute we mention those two cement mills—the minute we mention Dixon those two cement mills come to your mind?

A. You mentioned LaSalle and the number of cement mills at LaSalle.

Q. Are you acquainted with the cement mill, then, using your verbiage, at Linwood, Iowa, in the Davenport switch [fol. 492] ing district?

A. Yes, sir.

Q. Isn't that true, that on account of those cement industries that you chose to use——

Mr. Biaett: I object; Mr. Nelson did not choose to use any cement industries; Mr. Nelson—Mr. Vesey asked him questions, and he answered in the affirmative, that he was acquainted with them.

Mr. Vesey: I never heard of a cement mill until he mentioned it; did you?

Mr. Biaett: Why, certainly, I did.

Exam. Trezise: Go ahead, Mr. Vesey.

By Mr. Vesey:

Q. I say, isn't that a very competitive industry——

Mr. Biaett: I object; this witness has not been qualified to testify with respect to the degree of competition in the cement business in this territory, or any other territory.

Exam. Trezise: Let the witness answer, whether he is qualified to do that. Mr. Vesey propounds these questions outside of the cross-examination, as I see it; but it may be connected with it.

Mr. Vesey: I am going to connect it in due course, if the Examiner please.

Exam. Trezise: Mr. Vesey asked a question; and maybe Mr. Nelson doesn't know, and maybe he does.

[fol. 493] The Witness: I know there is a cement mill at Linwood; I know there is a cement mill at Dixon, and cement mills at LaSalle. Now, the extent that they compete with each other, I am not in position to say. There are many cement mills throughout the Central Western Territory.

By Mr. Vesey:

Q. In other words, you don't know whether they are competitive or not.

A. Well, I am not marketing, handling or selling their cement.

Q. By the way, Mr. Nelson, suppose I were to ask you that same question with respect to the other industries in the affected territory here, the compared territory and

Iowa, would your answer be the same as the answer you have just given me with respect to cement?

Exam. Trezise: He means as to the detail of the competition and the intensity of it.

Mr. Vesey: Exactly.

The Witness: Yes, sir; I think it would.

By Mr. Vesey:

Q. In other words, you don't know anything about the competition, one point as against another, or the industry; is that right?

Exam. Trezise: Now think that over; you did not say that before. Now if you want to say that, go ahead; but that is another thing.

By Mr. Vesey:

Q. In other words, you don't know anything about the competition—I will extend it—with respect to the Fulton [fol. 494] County coal between points in the affected territory and the points in the compared territory and the points in Iowa; is that right?

The Witness: I know that competition exists, but I cannot tell you the details and extent of the competition.

By Mr. Vesey:

Q. How do you know the competition exists?

A. I acquired this knowledge in various ways.

Q. Just give me two points now where competition exists, and tell me what that competition consists of.

Mr. Blaett: Mr. Examiner, Mr. Nelson stated that he was familiar with the competition in a general way; and that is an entirely different question from the question which Mr. Vesey is now putting here. He has not laid the basis for any such answer.

Exam. Trezise: All right; Mr. Nelson has stated that he *did* something about the competition; now Mr. Vesey can ask him if he knows any one point that competes with another point. He is entitled to do that. He can answer no, if he wants to.

Mr. Vesey: Yes, I take it, that it goes with it; although I am speaking only in so far as coal is concerned; users of coal.

The Witness: I understood you were talking about cement.

By Mr. Vesey:

Q. That is right; it uses coal, doesn't it?

A. Surely.

[fol. 495] Q. Substantial user of it?

A. Well, the producer of cement at Dixon would naturally compete with producers of cement at LaSalle and Linwood, and Mason City, and Chicago; Indiana Harbor, St. Louis, Missouri; wherever mills are located, wherever they attempt to market the cement, they must meet the competition of the other producers.

Q. Now, where the distances are comparable from the origin groups to the destination, in situations such as cement, do you know of any reason, Mr. Nelson, why the rate from that origin group on coal to the several competitors there should be different?

A. Well, there may be some of the rates now that are depressed rates; and I do not think that they should be used as yardsticks in making other rates.

Q. Except where the rates are depressed, would you say there would be no other differences; I mean no other reason why there should be a difference.

Exam. Trezise: The whole question assumes that the distance is the same, and the circumstances are the same.

Mr. Vesey: I said comparable distances; that is right.

The Witness: Well, it is possible to have two rates between different points of approximately the same difference that would not be the same; and both of them would be reasonable rates.

[fol. 496] By Mr. Vesey:

Q. That is not what I asked you; I asked you, do you know any reason why, for instance, where the distances would be comparable serving a competitor, let us say cement, do you know any reason why from the same origin group there should be a difference in the rates?

A. There might be reasons.

Q. Do you know of any?

A. There might be reasons; we would have to know all the facts pertaining to conditions.

Mr. Vesey: Mr. Examiner, I am asking him if he knows of any reason. I do not care what anybody thinks; I am asking his opinion; does he know of any reason.

The Witness: Where rates apply over more than one line, compared with rates that apply over one line; that might be a reason.

By Exam. Trezise:

Q. For a difference?

A. For a difference in rates; yes, sir.

Mr. Biaett: For a difference in transportation conditions?

The Witness: Another reason might be terminal charges that might be involved; there might be various reasons for differences in rates.

By Mr. Vesey:

Q. All right; do you think of any others?

A. Not right now.

Q. Now you have given me two possibilities; does either [fol. 497] one of the two apply in so far as Fulton County coals are concerned; moving to the cement plant at Dixon, the cement plant at LaSalle, or the cement plant at Linwood, in the Davenport switching district?

A. Well, the rates to Dixon——

Q. I am not talking about rates; I am asking you whether either one of those two factors you just mentioned applies at those three points from the Fulton County group.

A. Yes, sir.

Q. All right; which one, or both?

A. I started to explain the rates to Dixon apply over two lines, the rates to LaSalle over one line.

Q. Well, didn't you tell me yesterday under cross examination, Mr. Nelson, that in your opinion here average distances should be taken from groups; I think that you also said that the rates ought to be the same from the group to the given destination.

A. Generally that is true; yes, sir.

Q. Is that compatible with what you just said here, that because it moves over two different railroads, that that is a reason for making a distinction in rates?

A. I think that is a very good reason.

Q. Two lines have a difference in rates.

A. Where you have more than two lines, why, there is still greater reason.

Q. Is that why on the Burlington you reduced your Fu- [fol. 498] ton County coals at Victoria 5 cents below other Fulton County coals?

A. Victoria is not within the Fulton County district.

Q. Well, it is within the Fulton County field.

A. Quite a ways from Fulton County.

Q. What do you mean?

A. It is east of Galesburg; Fulton County is south and east of Galesburg. The distance from Fulton County to Victoria by rail is approximately 50 miles; at least, that is my recollection.

Q. Well, I will come to that in a minute: going on with your—isn't it true that Linwood, Iowa, is also served by two lines?

A. Linwood, Iowa, is in the switching district of Davenport, located on the rails of the Rock Island and the Milwaukee.

Q. So its position is the same as Dixon?

A. No, I wouldn't think so.

Q. Served by two lines?

A. The rate applying from Fulton to Davenport would automatically apply to Linwood.

Q. All right, Mr. Nelson; at least, that is one reason, in your view, for having a distinction; is that right?

A. Yes, sir.

Q. Now, the Interstate Commerce Commission has prescribed as a maximum rate, has it not, the rate from Fulton County to Linwood, Iowa, of $1.25?

A. Also to Davenport and other points on the west side [fol. 499] of the river there; they prescribed that in Docket 23130.

Q. And the cement plant we are talking about is at Linwood.

A. That is right.

Q. What is the distance from the Fulton County field to Linwood, Iowa, or Davenport, since it is in the switching district?

A. I think it is 118 miles; I am not sure.

Exam. Trezise: You mean the average distance from Fulton County?

By Mr. Vesey:

Q. The average distance; that is right.

The Witness: This exhibit shows to Davenport 110.7 miles from the Fulton County field. At the time the rate was prescribed by the Interstate Commerce Commission——

Mr. Vesey: I am not asking about that;——

Mr. Blaett: Let the witness answer.

Mr. Vesey: I asked him what the distance was; I asked him for nothing else.

Exam. Trezise: I think that is all right; he asked the distance and he got the distance.

Mr. Cardy: Mr. Examiner, it is 114 miles, as shown by the record here; in other words, it is 110 miles to Davenport, plus 3 or 4 miles to Linwood,—to keep the record straight.

Exam. Trezise: Now, what the Commission found, you can go into that on cross examination, or anything else.

[fol. 300] By Mr. Vesey:

Q. Now, Mr. Nelson, what is the switching absorption charge there at Linwood, on coal from Fulton County via your own line?

A. I do not remember; I would have to look that up.

Q. You don't know what it is?

A. I do not remember what it is.

Q. Would it refresh your recollection if I were to tell you it was 30 cents per ton?

A. I do not think that is right.

Q. That does not strike a responsive chord at all?

A. No, sir.

Q. You know you furnish it, though.

A. We furnish the switching charge?

Q. No, no; hardly. Do you know that you have that switching charge on moving coal from Fulton County in there, do you not,—at Linwood?

A. We would have to absorb the switching charge to make delivery.

Q. What is your best recollection as to what that charge is?

Mr. Biaett: I object.

By Mr. Vesey:

Q. Will you find out what it is.

Mr. Biaett: I have an objection; if Mr. Vesey wants the actual switching charge——

Exam. Trezise: He says what is your best recollection; [fol. 501] he didn't even want that kind of answer. What is your best recollection?

Mr. Biaett: I mean the tariffs are the best evidence of what the switching charge is.

Exam. Trezise: He asked that question; I don't know what good it would do if he got the best recollection, but he has asked it.

Mr. Vesey: Will you supply that to me this afternoon when you return to the stand; ascertain it during the lunch hour.

The Witness: I will endeavor to; yes, sir.

By Mr. Vesey:

Q. Now, what is the rate from Fulton County, Mr. Nelson, on the same coal going to the cement plant at LaSalle, Illinois, if you know?

A. $1.25.

Q. Now, is that the same rate that applies on the movement of that coal to Davenport? I think you answered that once, but I want to be certain that is in the record.

A. That is the same rate that applies to Davenport.

Q. What is the distance from Fulton County to LaSalle?

A. The average distance is 98.8 miles.

Q. 98.8 miles.

A. Yes, sir.

Q. Now, then, what is the rate, both present and proposed, from Fulton County to Dixon, Illinois, when you [fol. 502] get on this other cement plant?

A. The present rate, $1.50; and the proposed rate is $1.55.

Q. And what is the distance from Fulton County to Dixon, Illinois?

A. 123.8 miles, the average distance.

Q. 123.8 miles.

A. Yes, sir.

Q. Now, Mr. Nelson, if we had nothing else before us but those three illustrations, will you tell me whether or not in your opinion there is a lower level of rates intrastate than there is interstate on Illinois coal from Fulton County?

Exam. Trezise: Go ahead, Mr. Nelson; just answer it straightforward.

The Witness: Lower level of rates intrastate?

By Mr. Vesey:

Q. That is right, than interstate.

A. When you compare the level of the rate to Davenport with the level of the rate to Dixon, you have a lower level of rate to Davenport.

Q. And that is prescribed, that is the prescribed maximum rate on that coal, by the Interstate Commerce Commission, is it not?

A. That is the maximum rate prescribed by the Interstate Commerce Commission at the time the order was issued.

Q. And you knew that when you made the proposed in- [fol. 503] creases in this case, did you not, in the case of the movement of coal from Fulton County to Dixon, didn't you?

A. I explained yesterday——

Q. I just asked you, did you know, or didn't you know, Mr. Nelson.

Exam. Trezise: Just tell him yes, you knew it.

The Witness: Sure, I knew it.

By Mr. Vesey:

Q. And in spite of that knowledge, with reference to the competition you spoke of between cement plants, in spite of your knowledge as to distances involved, in spite of your knowledge that the Interstate Commerce Commission had prescribed a maximum rate to Linwood, you still

proposed to increase the intrastate rate to Dixon; didn't you?

A. Yes, sir; and I started to explain the conditions pertaining to the movement of Fulton County coal to Linwood today are different than they were when the order was issued.

Q. Do you know of any reason——

A. I would like to finish.

Q. I am sorry.

A. I stated in my direct testimony at that time there were 8 origin points in the Fulton County district, and the average distance from the field was 98 miles. Now there are 28 origin points, 27 origin points from the Fulton County district, and the average distance to Linwood is 116 miles, approximately, 115.9; to Davenport is 110.7. [fol. 504] So there has been a change in the conditions since the order was issued.

Q. You say a change in conditions.

A. Yes; the Fulton County field has expanded; more mines have been developed; additional origin points exist.

Q. Are you telling me that there is a relationship between rates and the number of mines that you find in a given field?

A. No; increasing the field though, has increased the distances.

Q. In other words, the more mines you get in a field the higher the rates should be, so that you get more money out of the field; is that the idea?

A. I am telling you that the development of the field increasing the mines, to spread out, has increased the average distance.

Q. Has increased the average distance?

A. Yes, sir.

Q. In other words, you have a longer haul now to Davenport than you had at the time the rate was fixed.

A. The average haul today is longer than it was at the time the rate was prescribed.

Q. Is that true as to the actual haul from mines to Davenport—in other words, if you had made a comparison in this instance, as you did in the case of the northern Illinois district to the short haul points to the mine moving the coal, would that be true, that the distance increased from [fol. 505] Fulton County to Davenport?

A. I do not understand your question.

Exam. Trezise: Do you mean the weighted average distance?

Mr. Vesey: Well, in effect, it would be the weighted average; yes.

Exam. Trezise: Maybe he would understand that.

Mr. Vesey: I was just asking him on the illustration he used, northern Illinois; he said we must forget about the average, just use the mine moving the coal; so I am asking about the mines moving the coal from Fulton County to the cement plant at Linwood.

The Witness: Well, the mines that are supplying the coal to Linwood, I think, are shipping it by barge.

By Mr. Vesey:

Q. Well, do you know?

A. They were until the river froze over.

Q. They were until the river froze over?

A. Yes.

Q. Is Davenport a short haul destination, under your theory, taking into consideration coal moving from Fulton County mines?

A. Yes, I say it is. It is not in Illinois, though.

Q. Well, I take it that the short haul territory is not circumscribed because of a state line, is it?

A. Not necessarily.

Q. In other words, you look at the actualities in move-
[fol. 506] ments, do you not, in determining the short haul territory, rather than state lines, or colorings on maps?

A. State line does not make any particular difference.

By Exam. Trezise:

Q. Now you said that distances to Illinois are independent, the destinations in northern Illinois, independent of the business, you considered them short haul territory; now, you say that distance doesn't make any difference; isn't that right, Mr. Nelson? Or did the Examiner misunderstand? Or are you still standing by your statement that you think that the distances to northern Illinois from Fulton-Peoria group are in short haul territory?

A. I do; yes, sir.

Q. Now you are standing by that? I do not like to get the record confused. One time he says distance doesn't

make any difference, and then the next time I get a little confused, Mr. Nelson.

A. I do not believe I said——

Mr. Cardy: Mr. Examiner, it is going to be pretty difficult for us to use the term long haul and short haul territory; the only question is what the rate is for the service, regardless of distance. We cannot define short haul territory in a particular point, or long haul territory.

Exam. Trezise: Well, pardon me for saying anything; go ahead.

Mr. Cardy: When they say rates in short haul territory, [fols. 507-508] I don't know what they mean.

By Mr. Vesey:

Q. Now, what is the difference between the Fulton County rate to Davenport, Mr. Nelson; that is, from Fulton County, and the rate from southern Illinois to Davenport, Iowa.

A. $1.00.

Q. That is $1.00 difference there; now, Mr. Nelson, do you know of any reason why the cement plant at Dixon should be required to pay a higher freight charge for the same identical coal in Fulton County than the interstate cement plant over at Linwood, Iowa?

A. I do not consider the rate to Linwood a proper rate; I think it is too low.

Q. I did not ask you that, Mr. Nelson; I asked you if you knew any reason why the one should be preferred against the other; if you know a reason, please tell me; if you don't, say you don't know.

Mr. Stadell: I object to the assumption in the question, Mr. Examiner, that there is any prefergence or prejudice there. It certainly has not been shown.

Mr. Vesey: $1.25 looks just a little different to me than $1.50; I don't know whether it does to you.

Mr. Cardy: Mr. Nelson, if I understand you, did you say that this interstate rate was too low?

The Witness: That is my opinion.

[fol. 509] The Witness: Well, there is a difference in the handling of the coal in one-line haul in the majority of instances from the field to Davenport, while to Dixon it is a two-line haul. I consider the rate to Davenport a depressed rate, and the rate to Dixon is a reasonable rate.

By Mr. Vesey:

Q. Well, is Davenport the depressed spot that you have been talking about in your testimony; does it move from Illinois now over to Davenport?

A. Davenport or Linwood.

Q. What do you have here now, just a changing spot; wherever you go it is depressed, so far as the carrier rates are concerned? I mean, I would like to pin the tail on the donkey some place, Mr. Nelson.

A. The point I am trying to bring out is you selected the rate to Linwood, Iowa, which is a very low rate; and you are trying to use it as a yardstick in measuring other rates for comparable distances. I do not think that we should use the lowest rates in the country to make our coal rates with.

Q. What question are you answering, of mine; so that I may follow you.

A. I am trying to answer the last one.

Mr. Vesey: Read the question.

Mr. Stadell: The witness has answered the question, to [fol. 510] the best of his ability.

(Question read.)

Exam. Trezise: May the Examiner understand that this pinning the tail means to change his direction or attention to Davenport, instead of Linwood? They are right close together, aren't they?

Mr. Vesey: Yesterday when we were asking about rates the depressed spot was in Illinois; now we are jumping over to Iowa. I would like to stabilize, find out where the depressed spot is. Or is it true that wherever you go now the rate for the purpose of making comparison, it is depressed? In other words, we have depressed rates everywhere.

Exam. Trezise: Well; let us answer; where is the depressed spot, do you know that answer; you can tell him that.

The Witness: I call the rate from Fulton County to Davenport a depressed rate.

Exam. Trezise: That is one of the depressed spots.

Mr. Vesey: Fine.

By Mr. Vesey:

Q. Now, with respect to those two cement plants, one at Linwood and one at Dixon, both using the same coal from Fulton County, do you know of any reason why one plant should have to pay a higher freight rate for its coal than the other plant has to pay for its coal?

A. When one rate is a depressed rate and the one is not, I do not think it is necessary to reduce the one to the de- [fol. 511] pressed basis.

Q. Is that the only reason that you know?

A. I explained the difference in the haul.

Q. I am talking about the two customers now, the two receivers of coal; do you know of any other reason than just that one?

A. I think that the receivers of coal should pay a reasonable rate.

Q. Now, Mr. Nelson, I asked you a very simple question, and I would like just a simple answer, if it is possible to get one.

A. You might compare the rate to Dixon from Fulton County with the rate from Mason City; there are cement mills at Mason City.

Q. Well——

Mr. Vesey: Will you please read the question back to the witness.

(Question read.)

The Witness: Yes; I answered that question.

By Mr. Vesey:

Q. Well, what is the reason?

A. One reason is you have a two-line haul to Dixon versus a one-line haul to Linwood.

Q. I am talking about the two customers.

A. The transportation is different; that is one reason.

Q. It is your contention that there is a difference in transportation conditions between Fulton County and Linwood, Iowa, and between Fulton County and Dixon; is that right? [fol. 512] A. That is my opinion; yes, sir.

Q. And aside from that, is there any other reason why one customer should have a higher rate on the same coal than the other?

A. I do not think you can equalize——

Q. Just answer my question, please.

A. That is what I am trying to do, is answer your question. I do not think that the carriers can equalize freight rates all over the United States, so that each cement mill will pay the same rate on coal. I do not think that is possible.

Q. If that answer be correct, that the difference is to be ascribable to the difference in transportation conditions, isn't it true, Mr. Nelson,—and I ask you this just to save time—isn't it true that the transportation conditions between Fulton County and Dixon are far superior to the transportation conditions between Fulton County and Linwood, looking at it purely from the carrier's point of view?

A. Far superior to Dixon?

Q. Yes, looking at it from the carrier's point of view.

A. No, not in my opinion.

Q. They are not, in your opinion; don't you have to cross a bridge going into Davenport from Fulton County?

A. Certainly.

Q. And you do not have a bridge between Fulton County and Dixon, do you, a bridge crossing?

[fol. 513] A. No.

Q. And don't you have an absorption charge which you just spoke of, going into Davenport, which you do not have when you go to Dixon?

A. Yes; but the bridge is owned by your own railroad; and you do not have any bridge toll to pay.

Q. Whose own railroad, the Burlington Railroad?

A. The Rock Island have a bridge across the river there, and the Burlington and Milwaukee jointly, they cross the river.

Q. You mean that you have no bridge charge across there?

A. We own the bridge.

Q. In other words, the bridge just grew up overnight.

A. Sure, it cost something to build it.

Q. Isn't that an adverse transportation condition?

A. Well, it costs something to build a bridge.

Q. And haven't you testified from time immemorial in rate cases, when it came to questions of cost of transportation, with its reflection into charges, that the bridge costs and the cost of construction throughout has to be considered by both this Commission and the Illinois Commission.

A. That is right.

Q. Why do you change your testimony at this time?

A. I was just telling you we owned the bridge, and there wasn't any bridge toll.

Q. You just want me to know that? Now, you publish [fol. 514] joint line rates also, don't you, from Fulton County mines to Linwood, Iowa?

A. Yes.

Q. Now, assuming that the switching charge amounts to something, and remembering what you just said about the bridge, I now ask you again, comparing the two hauls, the same coal, the same origin points, if the transportation conditions on the movement to Linwood are not poorer, or using any other term you want to use, than the transportation conditions existing on the haul from Fulton County to Dixon, Illinois.

Mr. Stadell: I object to the manner of that question. Mr. Vesey has not permitted the witness to state his opinion with reference to transportation charges from Fulton to Dixon. He stopped him every time he started to compare. He just let him make a few statements with reference to rates to Linwood.

Mr. Vesey: That is unfair criticism; I do not think I have limited him.

Mr. Stadell: The witness started to tell you about the rates—

Mr. Vesey: It is just a difference in the way we practice; that is all.

Exam. Trezise: All right, Mr. Vesey, go ahead; what is the question?

(Question read.)

The Witness: I answered that. In my opinion, they are [fol. 515] not poorer.

By Mr. Vesey:

Q. Would you say they are the same?

A. No, I would say they are better.

Q. Now tell me why are they better?

A. Because of the fact that to Dixon there is a two-line haul.

Q. Just go slowly; give them to me in one, two, three order now, the reasons why the transportation conditions be-

tween Fulton County and Dixon are better than between Fulton County and Davenport, or vice versa.

A. Well, I have given it to you two or three times.

Q. Now will you please stafe it for me.

A. In the case of Davenport it is a one-line haul; and to Dixon it is a two-line haul. On a two-line haul you have to divide the rate between two roads. I consider the rate to Davenport a depressed rate; it should properly be higher.

Q. Is rate a transportation condition?

A. No.

Q. Just confine yourself to the difference in transportation conditions, Mr. Nelson; that is what I want to know, and I want to know your reasons in one, two, three order.

A. I have given you my view.

Q. Do you have any others?

A. No.

Q. Now, the only one you have given me is the fact it is two-line haul to Dixon and one-line haul to Davenport; now, [fol. 516] isn't it also a two-line haul to Davenport, and doesn't the Burlington publish joint rates to Linwood?

A. We do to Linwood; not to Davenport.

Q. So that as far as your one and only reason is concerned, it fades when you remember your own joint rates.

A. Well, we have our own rails to Davenport; we can haul the coal all the way.

Q. Was there ever submitted to you, Mr. Nelson, or submitted to your committee representing the carriers, or did you yourself make any specific study to determine the extent to which the destinations in the affected territory were similar to the destinations in the compared territory, in so far as competitive industries are concerned?

A. There has been some investigation made; yes, sir. And there will be some witnesses testify regarding that. I did not make any special investigation myself.

Q. You did not make any yourself; was there a report or study made by your committee of carriers which was submitted to you?

A. It was not submitted to me, no.

Q. Was it in writing?

A. Not that I know of.

Q. Did you ever see one in writing, with respect to a comparison between those destinations?

A. No, I have not seen anything in writing.

Q. At no time?

[fol. 517] A. I answered you, no.

Q. And you would know if such a report or study had been made and submitted to the carriers?

A. There will be some testimony placed in the record, Mr. Vesey. You better address your questions to that witness.

Q. Bearing on that question.

A. Yes; there will be some testimony placed in the record.

Q. In other words, then, so far as you are concerned, the only knowledge which you have with respect to that competition is just a general belief that such competition exists.

A. General knowledge that I have acquired over a period of years, looking after coal traffic in northern Illinois territory; I naturally acquire some knowledge regarding conditions in the territory. We are comparing here, Mr. Vesey, rates to this northern Illinois territory that are depressed rates with rates to the interstate points and with rates from interstate points to the northern Illinois territory; and we are showing where they are on a depressed basis and should be increased.

Q. Well, now let us just—your representative points in the affected territory; as I understand your testimony, you are representing to these two commissions that in so far as coal is concerned, that these destinations are representative of the entire territory, the 98 points involved in this proceeding; is that right?

A. We selected these destinations as representative; yes, sir.

[fol. 518] Q. And if it should develop as to these destinations they are not representative, then, I take it, you would agree that you had failed to make a proper showing with respect to the necessity of increasing the rates into this territory.

A. You are making an assumption there; I do not want to agree to any assumption.

Q. You would not agree to that?

A. I would have to find out the facts first.

Q. That is, the competition at Amboy between Fulton County coals on the one hand and any other coal that you want to take from Indiana, Illinois, or western Kentucky at Amboy.

A. Coal competes with coal——

Q. I say, what is the competition between Fulton County coal and these other coals?

A. You are asking me where the coal comes from, to Amboy?

Q. No; I am asking you what is the nature of the competition between the coals at that destination. And so that we may have a common basis to start on, let us take the last year, 1942, as a base, so I cannot answer your question.

Q. Is that just an oversight, that you did not report it?

A. Well, I don't know.

Q. Didn't you know, Mr. Nelson, that there was not a pound of coal from Fulton County moved into that destination in 1942, or any other year?

A. No, I do not know that.

[fol. 519] Q. Didn't you think it was necessary to inquire into facts like that, when you were representing here that these rates constitute a 13th Section violation; or did you assume that coal is coal; and coal is coal means there must be some competition at all points?

A. We have not shown the movement to each and every point in this territory. We selected these representative points to show a representative movement.

Q. Was it just happenstance that you showed the representative point, a movement of coal from Fulton County to Rockford; or was that for the purpose of making the test representative so far as Fulton County was concerned, in this 13th Section proceeding?

A. It was not for the latter purpose.

Q. All right; let us go down one by one, then; what is the movement of Fulton County coal to your next point, Belvidere?

A. The only report that we have of movements are those shown in Exhibit No. 4.

Q. In other words, then, outside of Rockford here, you don't know whether or not there is a movement, or whether or not there is discrimination in so far as Fulton County coal is concerned, for example, at the points in the affected territory; is that right?

A. I cannot tell you how much coal had moved in there.

Q. Then, what is the revenue discrimination so far as [fol. 520] Fulton County coals are concerned, involved in this proceeding?

A. That does not necessarily mean there has not been any Fulton County coal shipped.

Q. I did not ask you that, Mr. Nelson; I asked you what was the revenue discrimination so far as Fulton County coal

is concerned in this proceeding, based on knowledge of movement to the points in the territory affected; tell me, what is that revenue discrimination?

A. Where the rates from Fulton County are on a depressed basis, and which moved tonnage, you have revenue discrimination.

Q. I want to know specifically what is the revenue discrimination so far as Fulton County coals are concerned, to the destinations in the affected territory here, from this witness; now, what is it?

A. You have movement of Fulton County coal into this territory; this exhibit of ours shows that.

Q. All I asked you, Mr. Nelson, is what is the revenue discrimination?

A. When you have lower rates on Fulton County coal than you have to interstate points, rates lower in level,——

Q. I am asking you specifically, what is the specific revenue discrimination so far as Fulton County coal is concerned, into this affected territory; now, what is it?

Mr. Stadell: When you say what is the revenue discrimination, I do not understand whether you mean describe its [fol. 521] nature, describe its amount, describe where it comes from,—or what do you mean? You have repeated the question three times, and it is too indefinite. I am just trying to help you, because Mr. Nelson was not giving you the right answer.

Mr. Vesey: Maybe I should bring you up to date, what I have done in the last ten minutes. The witness has said these destinations were representative destinations of this territory. I then asked him whether he knew there was a pound of Fulton County coal that moved to any destination other than Rockford; he said he didn't know. I now ask, on the basis of those statements, what is the revenue discrimination in this affected territory.

Mr. Zoll: I am still saying that question is somewhat vague.

Exam. Trezise: Do you understand what he means, what is the revenue discrimination in the affected territory?

By Mr. Vesey:

Q. I mean if you know; if you do not know, it is all right.

A. Well, discrimination is that the rates on which Fulton County coal is moved into this affected territory are not

bearing their share of the transportation burden; lower in level, and should be increased.

Q. Oh, so they are not bearing their share of the transportation burden?

A. That is my opinion.

[fol. 522] Q. What do you base that opinion on?

A. My Exhibit No. 11.

Q. Your Exhibit No. 11?

A. Yes, sir; which shows that the average level of the rates from the Fulton County district to the representative suspended points is 72.1 per cent of the H. & H. scale rate for the average distance involved, and that the average level of the rates from the same district to the representative comparative points, using the same formula, is 79.6 per cent on lump coal, and 77.9 per cent on fine coal, or higher than the level of the rates to representative suspended points.

Q. Now, is that the sole basis for that opinion that you just gave; that the intrastate rates were not bearing their fair share of the transportation burden?

A. It indicates that the intrastate rates are lower in level than the rates to the comparative points, and are on a depressed basis; and in my opinion, should be increased.

Q. I asked you, is that the sole basis for that opinion that you gave, that intrastate rates were not bearing their full share of the transportation burden; is that the basis for it, or do you have any other bases? I think, in fairness to the witness, if the Examiner please, he has sort of been under fire for an hour and a half here, we ought to take a little recess.

Exam. Trezise: Do you want that question pending?

[fol. 523] Mr. Vesey: I would like to have that answered; or if Mr. Nelson would like to have a recess first, that is perfectly all right with me.

The Witness: Well, take a recess now.

Exam. Trezise: All right; we will recess.

(A short recess was taken.)

Mr. Vesey: May we go off the record?

Exam. Trezise: Yes; off the record.

(Discussion outside the record.)

Exam. Trezise: All right, gentlemen, then let us continue. The answer to the last question is pending.

The Witness: Mr. Vesey, as I understand, your last question is, is the showing indicated by me in my Exhibit No. 11 the only reason that we have advanced for revenue discrimination; is that correct?

By Mr. Vesey:

Q. No, no; you told me that in your opinion the intrastate traffic revenues were not bearing their fair share of the transportation costs; and you then told me that that was based on your Exhibit 11; and I then asked you if that was the sole basis for that opinion which you gave.

A. Of course, the showing in Exhibit No. 11 is the recapitulation of the things that are in Robertson's Exhibits 3 and 4, and the reasons that the carriers have given are contained in these exhibits; and then their testimony all goes to make up the reason.

[fol. 524] Q. Now, my question again: Was that the basis for your opinion that intrastate rates do not bear their fair share of the transportation burden; now, is that Exhibit 11 the basis for that statement which you made?

A. Well, Exhibit 11 and other exhibits that have been placed in the record.

Q. What other exhibits?

A. Well, Robertson's Exhibits 3 and 4; all the exhibits that have been placed in the record up until now.

Q. The other exhibits do not show, do they, or give any indication of whether or not the rates and the revenues from intrastate business bear their fair share of the transportation burden, do they?

A. They give the level of the rates; Exhibit No. 11 is a recapitulation of the information that is contained in Robertson's Exhibits 3 and 4.

Q. In other words, your conclusion that the intrastate revenues are not bearing their fair share of the transportation burden is predicated solely upon the evidence to date in this case, which in your opinion indicates a lower level of rates in these destinations in the affected territory than exist in the compared territory; is that right?

A. It does indicate a lower level of rates; yes, sir.

Q. And that is the basis for that statement you gave?

A. Well, I have given other reasons. This Exhibit No. [fol. 525] 4 contains a statement that shows the revenue on the coal that moved under intrasfate rates compared with that that moved under the interstate rates. Now, the fact

that there might not be movement from one particular field to one individual representative point does not indicate that there is not movement to other points. These representative points were selected to show the situation in the district. They were representative; the movements of coal vary as a certain industry or dealer might obtain coal from Fulton County district this year and maybe next year he might buy it from some other district.

Q. You are not questioning the representative character of the destinations in the affected territory?

A. No, no.

Q. You have not changed your opinion as to the destinations in the affected territory?

A. No, sir.

Q. If what you said is true, and should it develop in this proceeding that there was no revenue discrimination whatsoever in so far as Fulton County coal to these destinations is concerned, would you still then say that an increase in the rates on Fulton County coal to these destinations would be proper, and a proper conclusion to arrive at in this proceeding?

A. You are assuming a great deal.

[fol. 526] Q. Well, assuming the assumption is proved to be correct, would you still insist on that under Section 13?

A. I do not think I should answer an assumption that way.

Q. You would not, you would rather not answer that question?

A. No, sir; I would rather not answer.

Q. Is that because you think that your answer would be an admission against your interest in this case?

A. No; I just do not like to answer questions based on assumptions.

Q. You have an opinion, I take it, but you just do not want to give it.

A. No, I have no opinion to withhold; I advanced opinions very freely, I think.

Q. Now let us for a moment just take a look at Exhibit 11. Exhibit 11 shows levels predicated upon average distances and average rates from several origin groups to the various destinations involved, does it not?

A. Yes, sir.

Exam. Trezise: Over the short tariff routes?

By Mr. Vesey:

Q. Over the short tariff routes?

A. Short tariff routes.

Q. And then didn't you testify yesterday, Mr. Nelson, particularly under cross-examination by Mr. Wilkinson, that as to certain of these origin groups there were varying rates to these destinations?

[fol. 527] A. What do you mean by varying rates?

Q. Different rates by different roads to these destinations, from the various origin groups.

A. Oh, yes; in some instances there are.

Q. Now, did you make a study to determine what road and on what rate the coal from the origin group moved to each destination?

A. This is not a weighted average, if that is your question.

Q. Don't you understand my question?

A. That is the way I understand from your question.

Mr. Vesey: Read the question.

(Question read.)

By Mr. Vesey:

Q. Did you make a study?

A. The coal that is shown in this exhibit, the tonnage that is shown in this exhibit——

Q. No, Mr. Nelson, did you make a study, for example, to determine over what road and on what rate the bulk of the coal moving to each of these destinations from a given origin group moved?

Exam. Trezise: Both representative and affected points?

Mr. Vesey: That is right; exactly.

By Mr. Vesey:

Q. Was such a study made, yes or no.

A. Well, the tonnage that is shown in this statement here, we know where it came from and we know it moved.

Q. You know what a study is, don't you?

A. Oh, surely.

[fol. 528] Q. Now, did you make one, or didn't you?

A. But we did not ascertain every ton of coal that moved over each of these rates for a given period of a year or two years, or ten years; no, sir; we did not.

Q. Then, so far as you know, coal moving from any one of these origin groups to any one of these destinations might have moved over the longest route, over the highest tariff; or it might have moved over the shortest possible route, over the lowest tariff from that particular origin; isn't that true?

A. That is possible; but it is reasonable to assume that it would move over the route that had the lowest rate, if it could.

Q. But you do not know which way it did move, because you made no study to find out.

A. I stated before that we did not find out the actual movement for a period of years under each rate.

Q. So, then, so far as you know, Mr. Nelson, based on your Exhibit No. 11, that exhibit does not show a true comparison of levels even from one origin group as against another origin group to any destination involved, taking into consideration actual movement of the coal.

Mr. Kaier: Object, on the ground that question is argumentative; conclusion to be drawn from the facts already established.

Exam. Trezise: Oh, ask him if it does. You may do that. [fol. 529] The Witness: It is not a weighted average; I assume that is what he is trying to get.

By Mr. Vesey:

Q. Just forget what I am trying to do; just answer my question.

A. Average level; that is what it is.

Q. And it shows nothing as to actualities of the situation.

A. It is not a weighted average.

Q. And that exhibit, taken in and of itself, submitted to any commission, does not show a true picture with respect to rate levels from any origin group to any destination, in so far as you know, Mr. Nelson?

A. Oh, I do not think you have to show a weighted average level to show a level.

Q. Mr. Nelson, I am not interested in what you think I have to show; I am asking you a simple question, based on what your own exhibit shows.

A. I have explained what the exhibit shows.

Q. Is that the only explanation?

Mr. Kaier: Do you think it is a true picture?

The Witness: I think it is a true picture; yes, sir.

By Mr. Vesey:

Q. You mean it is a true picture of a black and white page; I agree. But I am asking you as to the actualities in comparing levels; and I am asking if from that exhibit, or from having compared it with the Illinois group, is that the percentage figure which you give in here for the H. & H. scale?

[fol. 530] A. You have a distance; you have an average distance, you can ascertain the average—the rate under the scale and find out what your present rates are, of the H. & H. scale rate.

Q. And none of the coal moves over the average distance, does it?

A. Over the average distance?

Q. Yes.

A. Well, it is representative of the movement.

Q. Again, Mr. Nelson, none of the coal from the groups shown in your exhibit moves over the average distance.

Mr. Biaett: Of course they do not make up a car of coal from each of the mines in the group.

Mr. Vesey: Thank you; I thought I could get that.

Exam. Trezise: There is no distance like that.

Mr. Kaier: What the exhibit shows is terribly clear; we are getting nowhere with the questions.

Mr. Vesey: It is terrible; I don't know about the clear.

Exam. Trezise: Mr. Nelson, following your question, it is your thought, or is it your thought that that exhibit reflects the relative disparity between the level of the intrastate rates and the interstate rates?

The Witness: Yes, sir; it does.

By Exam. Trezise:

Q. As composed and constructed in the manner that you indicate?

A. That is right.

[fol. 531] By Mr. Vesey:

Q. And you are firmly of that opinion, Mr. Nelson?

A. Yes.

Q. How is that?

A. Yes.

Q. And that is the opinion that you now, as an expert witness, want to hold out to these two Commissions? Now, let us be certain of that.

Exam. Trezise: I think you have urgently said yes to that before; now you do not want to change that, do you?

The Witness: No, I do not want to.

Mr. Morgan: Did he say yes, or virtually yes?

Exam. Trezise: Let the witness answer whether he means yes or virtually yes, as to whether it shows the relative disparity between the state and the interstate rates, and reflects that disparity.

The Witness: The answer is yes.

By Mr. Vesey:

Q. Now let us take, for example, just coal moving from Brazil-Clinton district to Beloit, Wisconsin; didn't you testify yesterday that there was a difference over the Milwaukee Railroad, for example, as against the other roads going in there, of some 17 cents a ton?

A. You are speaking about proposed rates?

Q. What was that?

A. You are speaking about proposed rates?

[fol. 532] Q. No, no; I am speaking about the rate that has been published by the carrier, the Milwaukee Railroad, as against other carriers from Brazil-Clinton on the coal moving from the Brazil-Clinton group to Beloit, Wisconsin.

Mr. McElroy: Beloit, or Rockford?

Mr. Vesey: Beloit.

By Mr. Vesey:

Q. Do you have Rockford before you? Were you the one that suggested it? I don't care; the only point I am trying to establish is that from each origin group there are varying rates from the various mines to any given destination.

A. At the present time, as I read these exhibits, there is only one rate to Beloit.

Q. What was the 17-cent rate you were speaking about yesterday from Brazil-Clinton?

A. To Rockford.

Q. In other words, you have varying rates from Brazil-Clinton district over different roads to that destination, have you not?

A. We have a rate from Brazil-Clinton district to Rockford of $1.80 that applies via the Milwaukee Railroad. Then we have a rate 17 cents higher, $1.97, that applies from mines on the other railroads.

Q. Now, then, if you were to do as you have done in Exhibit 11, strike an average, and not know over which route coal moves to that destination from the Brazil-Clinton [fol. 533] group, you wouldn't know whether you were getting a true comparison with the intrastate rates.

A. Our comparison is for the proposed rates, and we used the mileage for those proposed rates, and we ascertained the average where there were two rates proposed that differed, we used both of them.

Q. Suppose all the coal moved over the lower rate.

A. As I told you before, this a mathematical showing, it is not a weighted average.

Q. Then, will you finally admit, Mr. Nelson, that your Exhibit 11 does not show the actual levels of the rates on which coal moves from the origin groups to the destinations?

A. It does not show a weighted average; it shows, in my opinion, the levels of the rates.

Q. Will you please answer my question.

A. I endeavored to; I am sorry that I have not answered it like you want me to.

Q. I just want you to answer my question, that is all. Will you read the question.

(Question read.)

A. I think it shows the levels of the rates.

Mr. Vesey: If the Examiner please, I am going to ask the witness, I am going to ask the Examiner to direct the witness, to answer that question. It is a simple question that any man sitting in that chair can answer; and certainly, on [fol. 534] the basis of his testimony today, I am entitled to a direct answer to that question.

Exam. Trezise: He said he thought it did show the level of the rates. Now you asked him whether it is average

rate, or distance; I don't know which, over which the coal actually moves.

Mr. Vesey: Exactly.

Exam. Trezise: That is what you want.

Mr. McElroy: Well, isn't the answer Mr. Nelson made to your question obvious to everybody, that it is not the actual average rate moving the coal.

Mr. Vesey: That is right; and I would like to question Mr. Nelson at a later date; that is why I would like to have a specific answer.

Mr. Kaier: Mr. Examiner, I submit that is not the purpose of taking this testimony; the purpose of this hearing is to establish the facts. Now, the facts have been established; but counsel wants the witness to draw conclusions from the facts, and to tell again what the exhibit shows and what it does not show. I submit that the whole examination is argumentative, and that it is improper cross examination.

Mr. Vesey: I take exception to that; that for the obvious reason, from the testimony today, the exhibit No. 11 does not show that which it purports to show.

Exam. Trezise: Well, there is no use arguing about [fol. 535] that. The question you asked is all right; and whatever answer he wants to make to it, is up to him.

The Witness: Well, Mr. Examiner, I have endeavored to answer it two or three times; I will try once more: I think that Exhibit No. 11 shows the average level of the rates into this territory; I mean the average level of the proposed rates to the suspended points, representative suspended points, and the average level of the present rates to the representative comparative points.

By Exam. Trezise:

Q. And it does not show the weighted average rate?

A. It does not show the weighted average rate. That is what I have been trying to tell him.

By Mr. Vesey:

Q. Nor does it show the comparison of the actual rates on which coal actually moved from the origin groups to destinations involved, does it?

Exam. Trezise: You distinguished that from the average weighted rate?

Mr. Vesey: Exactly right.

Exam. Trezise: I don't understand that.

Mr. Vesey: We have three things: a weighted average, and then a comparison of rates on which the coal actually moves from these origin groups to these destinations. When we talk about a theoretical in respect to the average, we talk about a theoretical, when we talk about the weighted [fol. 536] average, and then actualities——

Exam. Trezise: Let us go off the record right here.

(Discussion outside the record.)

Exam. Trezise: Go ahead.

By Mr. Vesey:

Q. Now, then, Mr. Nelson, to make a true comparison to determine the relationships of rate levels at a given destination, shouldn't the weighted average be used?

A. Well, the weighted average would show what actually happened.

Q. That is the thing we are concerned with, isn't it true?

A. But I think this is representative of the levels of the rates. When you use an average distance of a certain group you may have coal moving from the various mines in that group, and it may not move just exactly the same distance as your average distance, but still your average distance is representative of the distance from that group to these destinations. And the purpose of showing a comparison of the level of the rates, I think this exhibit is proper.

Q. Let us take, for example, the destination Amboy, that we first talked about; and speaking now of the intrastate Fulton County coal, tell me, will you please, where is the preference or prejudice that exists between the intrastate coals moving to Amboy from Fulton County?

A. The——

Q. —and the interstate coal that you had reference to [fol. 537] when you brought this proceeding?

A. Well, I am taking your word for it that there isn't any Fulton County movement into Amboy. That does not mean that there won't be a Fulton County movement, or that there has not been in the past a Fulton County movement. Because, as I stated a while ago, the movements change from one field to another for various reasons. A

consumer or dealer does not always buy his coal from one district; he changes it, and buys of other districts.

Q. What is the preference or prejudice that is involved at Amboy?

A. If there was no movement of Fulton County coal into Amboy, then in so far as Amboy is concerned, there would be no preference or prejudice, as I see it, to Amboy from Fulton County.

By Exam. Trezise:

Q. Well, couldn't the rate be so high that there couldn't be any movement, and still be a prejudice as to that locality? You are getting into questions here that I do not believe a rate witness ought to answer. When you get them on the record, I am not so sure that they are going to be very valuable. I don't know whether this witness knows.

Mr. Vesey: I assumed he did, because he said that he was one of the two—one of the committee representing the carriers that made this determination. Now, he certainly made it on something, and he had some basis.

[fol. 538] Exam. Trezise: You can proceed, but it does not make any difference what this witness says about what the application of the law is. But go right ahead.

Mr. Vesey: I am not seeking——

Exam. Trezise: He told you there would be no preference if there wasn't any movement. You know there could be, if there was no movement.

Mr. Vesey: I know that.

By Mr. Vesey:

Q. Was there a preference at Amboy, or a prejudice, in so far as any intrastate coals are concerned; and if so, what is that preference or prejudice?

A. I have no record of a movement of coal into Amboy. I have not testified about a movement of coal into Amboy. I have shown that the rates to Amboy from the Illinois destinations are on a low level, compared with rates to representative destinations. Amboy is representative of this destination territory.

Q. You say Amboy is?

A. It is one of the representative points.

Exam. Trezise: If that is a good stopping place, at 2 o'clock we will reconvene.

(at 12.30 o'clock P. M., recess taken to 2 o'clock P. M.)

Afternoon Session

The hearing was resumed pursuant to recess.

2 o'clock P. M.

[fol. 539] Exam. Trezise: Let us proceed, gentlemen.

C. J. Nelson resumed:

Cross-examination (Cont'd):

Mr. Morgan: If the Examiner please, with the courtesy of counsel who is conducting the cross-examination, I would like to ask just one question at this point, so as to make it possible to follow more intelligently some of the exhibits of this witness, particularly Exhibit 11, which is on examination and to which particular reference is being made.

Exam. Trezise: Mr. Vesey, do you yield to Mr. Morgan?

Mr. Vesey: I do.

By Mr. Morgan:

Q. Mr. Nelson, will you point out in the prior exhibits the exact page of the prior exhibits from which you obtained the data on which you computed the figures appearing in lines 14 and 15 of your Exhibit 11.

Mr. Biaett: That would take practically all afternoon, if the Examiner please.

Mr. Morgan: You mean he hasn't any notes or anything with him, to which he can refer?

Mr. Biaett: No, sir, he will have to go through all of these points and all of these 19 groups.

Mr. Morgan: I am only referring to two groups, 14 and 15; and it should not—I am assuming this witness prepared this exhibit, and he should be in position, I assume——

[fol. 540] Mr. Biaett: Mr. Morgan, I did not say that he could not do it; I just said it would take an awfully long time for him to do it at this time.

By Mr. Morgan:

Q. How long would it take you to do that, Mr. Nelson?

A. Well, it would take some time; it took a long time to compile this exhibit.

Q. I assume it may have taken a long time to compile the exhibit; but having reference to Robertson's Exhibits to which you adverted this morning, could you identify the divisions and pages in the prior exhibits on which you base that exhibit; having reference, as I say, only to lines 14 and 15 of your Exhibit 11.

Mr. Kaier: The sections of Exhibits 3 and 4 from which it was taken are identified at the top of Exhibit 11. I assume you want more than that, Mr. Morgan; is that right?

Mr. Morgan: I want the identification of the source; first, line 14, and then line 15, so that anyone can check it back, even though he not be a railroad man.

The Witness: On page 2 of Section 5 of Exhibit No. 3, we show seven origins, total 1695.9 miles from Brazil-Clinton to Amboy, Illinois. That is on line 14 of page 2, Section 5, Robertson's Exhibit 3.

On line 27, page 4, the same section, the same exhibit, we show 30 origins, 7,955.7 miles from the same origin dis- [fol. 541] trict, that is, Brazil-Clinton to Belvidere, Illinois. The proposed rate in the first instance to Amboy was $1.84——

By Mr. Morgan:

Q. If you will just mention the lines and save the record, shorten it.

A. Well, you have to go to Exhibit No. 4 to get the proposed rate; the mileage is taken from Exhibit No. 3.

By Exam. Trezise:

Q. Mr. Nelson, you got all of your information, didn't you, out of these exhibits?

A. Yes, sir.

Q. To make up your Exhibit No. 11?

A. Yes, sir; this is a recapitulation of the information contained in these two exhibits.

Exam. Trezise: The Examiner does not understand quite the point you want to make. Do you want to make some point about this, Mr. Morgan?

Mr. Morgan: This hearing, if the Examiner please, will probably terminate tomorrow; and Exhibit 11 is a recapitulation. I desire the source of the data, by description, mentioned on which Exhibit No. 11 is based, so that it can be checked.

Exam. Trezise: Well, you can take this Section 5 of Exhibit 3, and find the destination at the top of the page. And then you have your group number, and you get the answer to the distance.

[fol. 542] Mr. Morgan: I want to know what the witness took.

The Witness: I told you for those two points. Now I can go ahead——

Mr. Morgan: You have mentioned just certain items.

Exam. Trezise: He has got the distance now; do you want to know how he got the rates?

Mr. Morgan: Just reference, if he has anywhere a check as to distances, source; then he can shift to the other exhibits, as to where he obtained his rates.

The Witness: Well, the rate to Amboy is shown on page 2, line 14, section 4, of Robertson's Exhibit No. 4; proposed rate, $1.84.

Now, the proposed rate to Belvidere is shown on the following page, page 3, the same section, the same exhibit, line No. 13, $2.12. And so on, all the way through. We took the average, we took the total distance, the total origin points from each district to each destination, coupled with the proposed rate, put them all down here and added them together, divided the grand total addition by the total number of origin points; and that gave us the average distance.

And we ascertained the average rate, we applied the H. & H. scale to the average distance, and then ascertained what per cent the average rate was of the scale, which is simply a matter of mathematics.

[fol. 543] Q. The latter page is mathematics?

A. Well, it is all mathematics; all the information is in these two exhibits. And the reason we put it up in this form was so that you can see the whole picture. It is somewhat difficult to take one of these exhibits and compare the level of the proposed rate to a comparative suspended destination, and then leaf over four or five pages and compare the level of that rate with the present rate to the compara-

tive destination. So, in order to show the whole picture, we worked up Exhibit No. 11.

Q. Now, the data, then, was obtained in the same manner from Exhibits 3 and 4 with respect to all items appearing in the various columns under lines 14 and 15 of Exhibit 11, excepting the mathematical computations as to the averages; they were computed in the manner you stated.

A. Well, the exhibit shows how they were computed. You say lines 14 and 15, Exhibit 11—oh, I see what you mean, lines 14 and 15 of Exhibit 11; that is right; they are all computed in that manner.

Q. And all the data appearing in Exhibit 11 was obtained from Exhibits 3 and 4?

A. That is right.

Q. Except to the extent it might have required a mathematical computation?

A. Well, after we got the data down, then it was a ques-
[fol. 544] tion of dividing, which is mathematics.

Q. Did you compute those mathematical computations yourself, personally?

A. No, sir; it was done under my supervision.

Q. By Burlington Railroad employees?

A. Yes, sir.

Mr. Morgan: That is all.

By Exam. Trezise:

Q. Well, now right along that line, taking for example Section 4 of Exhibit 4 and turning over to page 3, where you have below it the present rate.

A. That is right.

Q. There is a proposed rate too, to that point, isn't there?

A. Yes; we did not take the proposed rates to Beloit into consideration in compiling this exhibit, because Beloit was shown as a representative comparative destination in our exhibits.

Q. Is that true with respect to all other origin groups in—no, not all other; the Brazil-Clinton, Linton-Sullivan, and Princeton-Ayrshire groups, in making the calculations here to Beloit you used the present rate, and did not use the proposed rate, or an average of the proposed rate; that is true, is it?

A. That is right. The names of the points to which we showed an average of the proposed rates are indicated at the top of columns 1 to 7, inclusive; and Beloit is not listed there. And you will find Beloit listed at the top of columns [fol. 545] 8 to 14, inclusive, as a representative comparative point.

Q. The only point I was making was that Beloit, while it is a representative comparative point now, if these increases are allowed it would fall outside of your Exhibit 11 in reflecting the results that are indicated by that exhibit; that is true, isn't it? Of course, because it is a different rate.

A. Surely.

Exam. Trezise: Thank you. I thought maybe Mr. Morgan might want to know that, inasmuch as he is asking how you calculated these particular figures.

By Mr. Morgan:

Q. As I understand also, all the comparative points were excluded in Exhibit 11, from calculations.

A. Comparative points?

Q. Yes.

A. No, sir.

Q. Beloit was the only one that was excluded? And by comparative points, having reference, I believe Exhibit 2 states those comparative points.

A. If you will look at the top of Exhibit No. 11 to the other columns, 1 to 7, inclusive, you will find the names of the representative suspended points.

Q. Those are all in Illinois?

A. Yes, sir. Then, if you will look at the top of the page, over columns 8 to 14 inclusive, you will find the names of the representative comparative points, and Beloit is one of them.

[fol. 546] Mr. Morgan: That is all.

By Exam. Trezise:

Q. Just what you said is true; but when you come to the rates from the three groups, the first three groups in Indiana to Rockford, of course there you show two rates, the present rate and the suspended rate.

A. That is right.

Q. But you did not do that to Beloit?

A. That is correct; we showed the present rate.

By Mr. Cardy:

Q. Mr. Nelson, do I understand that in the I. & S. proceedings you are attempting to increase the Beloit rates?

A. That is right.

Q. And what is the measure of that 15 cents, or does it vary?

A. Beloit is 15 cents higher than the proposed rate to Rockford.

Q. I just wondered whether or not you were asking a change in the Beloit rates in this proceeding. Is that only from Indiana?

A. No, there is no change in the rates from Illinois.

Mr. Cardy: That answers the question.

Exam. Trezise: May I ask this question, then: I am not sure about your Exhibit 11, in calculating the average rate, if you have done that; and I think maybe you have. You used to Rockford the present and the proposed as a composite figure; but going to Beloit, you have used only the present rate in calculating what the average rate [fol. 547] might be, in your Exhibit 11. Am I wrong about that?

The Witness: Mr. Examiner, to Rockford we used only the proposed rate,—to Rockford; not the present rate.

By Exam. Trezise:

Q. I see. Then, in calculating your average to Rockford, to justify that sort of rate, you used the proposed rate.

A. That is right.

Q. But then when you come to Beloit, as you say, you used the present rate, rather than the proposed rate in determining what the average would be?

A. That is right, because we classified Beloit as a competative point.

Exam. Trezise: Is that all, Mr. Morgan?.

Mr. Morgan: There is one question that is not answered: Did he follow the same procedure with respect to the other southern Illinois points; that is, using the present rate rather than the proposed rate?

Mr. Kaier: No, we did not use the present rate to any southern Illinois.

Mr. Morgan: He just stated he did, as to Beloit.

Mr. Kaier: That is not in Illinois.

Mr. Morgan: Pardon me; I should have said Wisconsin.

By Mr. Morgan:

Q. In the comparative cities in southern Wisconsin, did you follow the same procedure as you did in the case of [fol. 548] Beloit, as you previously stated that you merely used the present rate?

A. That is correct.

By Exam. Trezise:

Q. But that is not to be interpreted to mean that there is a change from the other groups to Beloit at all; the rate is the same. Of course, you used the only rate that was there, is that right?

A. We are proposing some changes in the rates to Beloit; but in making this computation we did not measure the proposed rates to Beloit.

Q. Are you changing any rate from any place at all to any other point in Wisconsin, than Beloit, in this particular proceeding?

A. Not to Wisconsin.

Q. Not at all; you are not changing any rate; so you took the rate that was in effect; it is the present rate, the future rate until it is changed. I wanted to get that straight, because that is misleading, if you used the same principle. Of course, you used the same principle, because there is only one rate to use to any other point in southern Wisconsin; isn't that true?

A. That is correct.

Mr. Morgan: That is all.

Exam. Trezise: Do you have some more questions, Mr. Vesey, at this time?

Mr. Vesey: Yes.

[fol. 549] Exam. Trezise: Mr. Vesey.

By Mr. Vesey:

Q. Mr. Nelson, as I understood your testimony just before the noon recess, you stated that you had not made

any specific study, nor had the carriers' committee made any specific study to determine whether or not any particular individual or industry in the compared territory was directly competitive with an industry or individual at the point of Amboy, for the purposes of determining whether or not by virtue of the difference in the rates intrastate as against interstate, resulted in a preference to the competing unit at Amboy as against the competing unit in the compared territory; is that correct?

A. I did not make a personal investigation; but as I stated this morning, there will be some additional testimony on that phase of the case.

Q. And your committee representing the carriers did not make any specific study to that end.

A. I cannot answer that question; you will have to let the witness tell.

Q. Then, you don't know whether they did or not; is that it?

A. I know they made investigation, but I cannot tell you definitely regarding Amboy.

Q. Do you know any individual consumer of coal, or any company or corporation consuming coal in any of the destinations in the compared territory competing directly [fol. 559] with a concern located at Amboy in so far as Fulton County coals are concerned, in which difference in the rates results in an actual preference, not a theoretical, an actual preference of the concern at Amboy; of your own knowledge, now.

A. As I stated, I did not make any personal investigation regarding the movement to Amboy. You told me this morning there was no movement from Fulton County. Now, that fact may or may not indicate preference or prejudice between the districts in Illinois; but I think that the difference in rate level of the rates at Amboy——

Q. I am not interested in a nice theory of the level of the rates; I am just talking now—and I want your answers confined to my question—as to whether or not you did make that study, and what it shows.

A. I would like to finish my answer.

Q. I don't care for your answer now as to that; we have covered that time and again. I want a specific answer to my question.

Exam. Trezise: Let us have the question.

(Question read.)

A. I answered that.

By Mr. Vesey:

Q. The answer is no?

The Witness: Will you read the answer.

(Answer read.)

By Exam. Trezise:

Q. Well, Mr. Nelson, with all the implications, amplifications and ramifications in the question that was asked, is [fol. 551] your question yes or no?

A. The answer to his question, did I make a personal investigation, is no.

Q. And you can embrace all these other things in there; you don't know about the intensity of that competition to these—between these shippers; you could not have first hand knowledge of it anyway; that is true, isn't it?

A. I made no investigation at Amboy.

Exam. Trezise: Go ahead.

By Mr. Vesey:

Q. And in so far as the receivers of coal are concerned, you made no investigation; that is correct, isn't it?

A. At Amboy?

Q. As against the other compared points.

A. That is correct.

Q. And if I were to ask you the same question, destination by destination, taking the 12 representative destinations in the affected territory as against the ones in the compared territory, your answer would be the same, wouldn't it?

A. I made no personal investigation; I told you so.

Q. And then, so far as you know, taking all the receivers, you made no investigation and you do not have any facts now, do you, to rely on, to show that a preference actually exists between receivers of coal in the affected territory, point by point, and the receivers in compared territory?

[fol. 552] A. I think that the rate levels indicate that it actually exists. To illustrate, if there was an industry planning to locate in this area in northern Illinois or southern Wisconsin, the sites in northern Illinois would no doubt be preferred, because they have a lower level of rates.

Q. And that is the sole basis for your answer?

A. That is right.

Mr. Vesey: Thank you; that is all.

Exam. Trezise: May I just ask a question along the line that Mr. Vesey was questioning before, to have it altogether, if you will pardon me, please:

By Exam. Trezise:

Q. About this rate from the Fulton-Peoria group to Dixon, do you recall how that is maintained; was it established voluntarily by the carriers, or by some commission? Do you know that?

Mr. Cardy: I can state it was not by an order of the Illinois Commerce Commission.

By Exam. Trezise:

Q. That was not established by the Illinois Commerce Commission, was it?

A. No, sir; it was not. The complaint involved the rates to Dixon, that did not include rates from Fulton County.

Q. That is right; now, is the rate from the Fulton-Peoria group to Moline the same as the rate from the same origin to Davenport.

A. Yes, sir.

[fol. 553] Q. Do you recall that the rate from the Fulton-Peoria group to Moline was increased from $1.00 in the old 13th Section case No. 23130 to a so-called minimum rate of $1.23 at that time, I believe; do you recall that?

A. No, the Moline rate was made $1.15.

Q. All right; we will even take $1.15, if you like. Then the rate to Moline was fixed as a minimum rate, not a maximum rate; the Interstate Commerce Commission cannot fix maximum rates.

A. It was fixed as a minimum rate to Moline.

Q. It was fixed as a minimum rate to Moline, was it not?

A. That is right.

Q. And that rate was made applicable to Davenport; do you recall the reasons for that?

A. A later decision in the same case, they reduced the rate to Davenport to the same level as the rate to Moline, $1.15, and made it a maximum rate, because of the competition that existed between Davenport and the east side cities, Rock Island and Moline. They stated that this Tri-City area was one large industrial area.

Q. And was it true that various industries using coal, as well as coal merchants at Davenport, are in competition with industries of like nature at Moline?

A. That is correct.

Q. So the Commission fixed a minimum rate to Moline; [fol. 554] it was extended to Davenport, did you say as a maximum rate? Where did you get that?

A. They made the Davenport rate the same as the Moline rate.

Q. I thought you said they made it because they were all in the same area, and it was because of the competitive situation; and if you try to remove a competitive situation you try to avoid undue prejudice.

A. Well, it would be a maximum rate; it would also be a minimum rate.

Mr. Vesey: May we go off the record?

Exam. Trezise: Off the record.

(Discussion outside the record.)

By Exam. Trezise:

Q. Mr. Nelson, had they put in $1.14, then, to Moline, that would not have been in conformity with the law, would it; I mean that was not in conformity with what you had to do under the order; you had to put in $1.15, you could not put in $1.14, could you; that is, and obey the order; so you had to raise it up to $1.15; or, rather, what you really did do is to take it from $1.23 and put it down to $1.15.

A. That is what we did.

Mr. Morgan. Is that like the Davenport rate?

The Witness: Yes, sir.

By Exam. Trezise:

Q. Then that $1.15 became the Davenport rate?

A. That is right.

[fol. 555] Exam. Trezise: I think there is a lot of argument about that; but I think the Commission will not be misled.

Mr. Vesey: If the Examiner please, I ask the Examiner to take judicial notice of that portion of the decision of the Interstate Commerce Commission shown on page 305 of 197 ICC, reading as follows: "We find in No. 21020 that the rates on bituminous coal in carloads from the northern Illinois, Fulton County, and Bureau County districts including Wilmington but not including Alpha or Fenton," and so forth, "and Buffalo, Iowa, are and for the future will be unreasonable and unduly prejudicial to the extent that they exceed or may exceed $1.15 per net ton."

Now, if the Examiner please, in view of that, I would like to ask the witness just one question.

Exam. Trezise: Go ahead.

By Mr. Vesey:

Q. In so far as the rates are concerned, Mr. Nelson, do you subscribe to the principle that the rates of coal from any given origin group into short haul territory should be the same to points equi-distant from the origin group, unless there are strong reasons of record to compel a difference?

A. The fact that they may be the same distance between point of origin and destination does not necessarily mean that the same rate should be established.

Mr. Vesey: Read the question back to the witness.

(Question read.)

[fol. 556] Mr. Biaett: Will you read the witness' answer, please.

(Answer read.)

The Witness: I think, Mr. Vesey, that you have to take all the conditions and facts that pertain to each case into consideration, in reaching a conclusion as to what rate should be established. And there is no uniform rule that you could follow in establishing rates in short haul territory.

Mr. Vesey: I ask that the question be read again, and ask that an answer be given.

Mr. Kaier: I submit, the question has been answered, Mr. Examiner.

Exam. Trezise: We will have to have it read again.

(Question read.)

The Witness: Well, I think my answer is——

Exam. Trezise: The answer is that they should be, with the qualifications that he put on his question.

The Witness: Yes, sir. I said it a little differently, but that is what it means.

By Exam. Trezise:

Q. But you want to be assured that the situation has all those qualifications.

A. That is right.

By Mr. Vesey:

Q. Then, just let me ask you these questions, Mr. Nelson: In so far as the Fulton County coals are concerned, the terminal charges at point of origin are the same, are they not?

[fol. 557] A. You mean on two movements of that kind?

Q. Yes.

A. That is right.

Q. And the terminal charges at destination are the same?

A. Well, that may or may not be true.

Q. Take any destination in the affected territory, that you know of; is there a difference in the terminal charges at point of destination?

A. Oh, yes; certainly there is.

Q. Which ones do you have in mind?

A. Well, the terminal charges, they include the switching absorptions of other roads, the cost of making delivery to other lines, or making delivery to the industry if it is on your own railroad; and they vary at different points.

Q. Is there any substantial difference in the terminal charges at the destination points, using the 12 representative points in the affected territory?

A. Yes, there are subsfantial differences.

Q. When you say substantial, what are you thinking of in terms of cents per ton?

A. Well, I could not tell you in terms of cents per ton; but there are differences, different conditions exist at the different points, difference in cost of handling shipments. At this point an industry may be located on the end of a long spur. It costs more to deliver a car of coal to that [fol. 558] industry than if it was located along the main line.

Q. Well, you do not make any different rate to your short haul territory because of such a difference as that, taking your own road, for example.

A. All those things are taken into consideration.

Q. At a given destination, do you mean that you have variations in the rates because of variations in the length of the spur at a given place?

A. Oh, I mentioned that just as an illustration that there could be different conditions.

Q. In so far as the affected territory is concerned, is there any substantial difference, one destination as against another, in the terminal charges?

A. Yes, there is a substantial difference. Terminal charges at Rockford may not be the same as the terminal charges at Freeport, Sterling, or Dixon.

Q. Will you prepare and submit, when this hearing reconvenes on the 26th day of May, a list showing the variations in the terminal charges at the site of destination which you used as representative in this proceeding for the affected territory, and also for the representative destinations in the compared territory?

Mr. Biaett: Mr. Examiner, that will include not only switching charges and switching absorptions, but also some study of costs; and it is not our purpose in preparing our [fol. 559] case to submit any such data.

Mr. Morgan: You mean you do not propose to submit any cost data?

Mr. Biaett: None whatsoever.

Mr. Vesey: I am asking the witness.

Exam. Trezise: Counsel can answer that particular question, in producing the record.

Mr. Biaett: No, sir; we will not.

Mr. Vesey: That is all. I think Mr. Nelson told me before lunch that he would give me the switching rate at Linwood, switching absorption by the railroad. Did you check that in the noon hour?

The Witness: I did not have an opportunity to do it. Do you want it furnished later?

Mr. Vesey: Oh, definitely.

The Witness: All right, I thought maybe you wanted it now.

Exam. Trezise: Mr. Bather, I think you may begin; unless you will let the Examiner ask the witness a question.

By Exam. Trezise:

Q. How many other points can you name, on interstate commerce, that may have a lower basis of rates from the Fulton-Peoria group than the intrastate rates from the Fulton-Peoria group; how many other points than,—I think you named Davenport.

Mr. Vesey: Janesville too, Mr. Examiner.

[fol. 560] By Exam. Trezise:

Q. How many other points? Of course, I meant lower rates for distance considered on interstate commerce.

Mr. Cardy: Mr. Examiner, I believe there will be an exhibit on that point. Mr. Nelson might add to any that we have found.

Exam. Trezise: You have an exhibit? Well, then let us pass that question, unless Mr. Nelson has it immediately at hand here. The question is, there are some other points, Mr. Nelson.

The Witness: The rates to Clinton, Iowa, are very low.

Mr. Vesey: May we go off the record?

Exam Trezise: Off the record.

(Discussion outside the record.)

Exam. Trezise: Mr. Bather, we will listen to you now.

By Mr. Bather:

Q. Mr. Nelson, in your direct testimony you gave as your opinion that the rates to the affected territory, of which I will use Rockford as typical, were on a depressed basis: is that correct?

A. Yes, sir.

Q. Going back to 1910, and up to the present time, what increases in cents per ton have been made in the rates, for example, from southern Illinois to Rockford?

A. That is shown in the rate exhibit, Mr. Bather.

Q. I know; but I am going to follow that up. The rate [fol. 561] originally was, as I recall, about $1.15 in 1910; I think it is shown in the rate history.

Mr. Kaier: I think you will find it on page 8, Mr. Nelson, of Exhibit 4, Section 1.

The Witness: From southern Illinois?

By Mr. Bather:

Q. Yes.

A. January 1, 1910, the rate was $1.152.

Q. And your rate today, including the ex parte 148 increases, is $2.15.

A. Yes, sir.

Q. And under the proposed rates you would make that rate $2.30?

A. That is correct.

Q. Or practically 100 per cent increase in the rates since 1910?

A. Yes, sir; during that period, though, Mr. Bather, there has been a great change in conditions; cost of labor, and all that.

Q. I will get to that; I do not believe you want to testify, do you, as to transportation conditions?

A. No, sir; I do not.

Q. Well, you made the statement there has been a change in conditions; and I do not believe you want that in the record, so far as your testimony is concerned. Because I do not intend to cross examine you on that point. Now, you stated that the rates from Illinois and Indiana and west Kentucky to Chicago are depressed rates.

[fol. 562] A. Yes, sir.

Q. And that those rates were below what you consider a reasonable rate for the service rendered?

A. They are below what I consider a proper rate. They are reasonable minimum rates, I would say.

Q. They are compensatory, then?

A. Well, that is my opinion, that they are compensatory.

Q. In other words, you do not have any out-of-pocket costs in the handling of coal from the Illinois mines to Chicago.

A. Out of pocket costs?

Mr. Kaier: We are not making any such contention here; we will admit, Mr. Bather.

Mr. Bather: All right; that is the answer.

By Mr. Bather:

Q. Now, what is the distance via the Burlington Road from, say, Herrin, Illinois, which is practically the center of the southern Illinois district, to Chicago?

A. It is a little over 400 miles.

Q. And what is the distance from Herrin, Illinois, to Rockford?

A. Well, Mr. Bather, I cannot give you the exact distance from Herrin, Illinois, to Chicago from these exhibits; I can give you——

By Mr. Bather:

Q. What I want to get at is the distance to Rockford from the southern Illinois group, via the Burlington Road less than it is to Chicago?

[fol. 563] Exam. Trezise: Let him tell you what the distance is. He said the other day that the distance from southern Illinois via the short tariff routes to Rockford was 369 miles. Didn't you say that?

The Witness: The distance via the short tariff route of the Burlington to Rockford, C. B. & Q.—Sterling—C. & N. W.——

By Mr. Bather:

Q. No, I asked you what the distance is.

A. That is our short tariff route.

Q. I am not speaking of that; I am asking you what the distance is via Burlington rails from Herrin, Illinois, to Chicago, as against the distance from Herrin, Illinois, to Rockford.

A. I haven't that here; I cannot get it from this exhibit.

Q. Can you get that?

A. Surely, I can.

Mr. Kaier: Mr. Bather can get that.

Mr. Bather: I have it, if you want it.

Mr. Kaier: We don't want it.

Mr. Bather: I thought maybe the witness knew.

Exam. Trezise: They don't want to furnish it; go on.
Mr. Kaier: It is in the tariff.

By Mr. Bather:

Q. Would you accept the statement that the distance from Herrin, Illinois, to Rockford via the Chicago, Burlington & Quincy is 409 miles?

A. I think that is approximately correct.

[fol. 564] Q. And your distance from Herrin, Illinois, to Chicago is 423 miles.

A. The average distance from Burlington origins in southern Illinois to Chicago via the direct route of the Burlington is 415.2 miles. Just what the distance is from Herrin, I cannot tell you.

Q. That answers my question. What is your terminal absorption on coal delivered at Chicago?

A. To an industry on the Burlington?

Q. Well, take an industry on connecting lines, what absorption do you have to make in making delivery of coal to your connections in the Chicago terminal? I know it varies, but can you give me an idea what the average would be?

A. Well, if it went to an industry on the road that we have a direct connection with, the absorption would be a little over 31 cents a ton.

Q. It would be, then, approximately $16 a car, wouldn't it?

A. On a 50-ton car.

Q. What is your terminal absorption on coal delivered to industries on your connections at Rockford?

A. It is much less than that; I don't know what it is.

Q. Would you accept the statement that it is $3.15?

A. That sounds a little low, Mr. Bather.

Q. Well, the original absorption was $2.97, plus 6 per cent, which makes it $3.15 if delivered to industries on your [fol. 565] connections at Rockford.

A. Well, that may be correct; I would have to look at the tariff to verify it. There might be some variation in switching charges too; they are not all $2.90, or $3.15.

Q. They are all the same; you absorb the same amount, or you charge the same amount of reciprocal switching at Rockford as the other lines do?

A. Yes; but there might be a variation between roads, Mr. Bather.

Q. Well, I don't know of any——

A. It is not unusual to have a different switching charge to one industry versus another.

Mr. McElroy: That is what the Supreme Court says.

The Witness: If your conditions justify a higher charge.

By Mr. Bather:

Q. Do you know of any?

A. No, I don't know of any; I don't know what the charges are.

Exam. Trezise: Now, as we make records, if we are going to use facts as Mr. Bather has stated them, will you put your statement in the record some other way. Off the record, please.

(Discussion outside the record.)

The Witness: Mr. Bather, I think a better yardstick to use in measuring the rates to Chicago and to Rockford from southern Illinois would be the average short distance, in- [fol. 566] stead of selecting the Burlington Railroad, which is the long line from southern Illinois, and comparing it with the Burlington Railroad to Rockford. We are not the short line to Rockford; but our route is not quite as circuitous, as far as Rockford is concerned, as it is to Chicago. So I think the proper comparison would be to use the average short tariff distance, which is shown in this Exhibit No. 4.

By Mr. Bather:

Q. I am inclined to agree with you on that No. 4.

A. Now, we, in order to stay in business at Chicago, have to meet the rates of the other railroads.

Q. If I agree with you on that theory; but if you are handling coal to Chicago at a loss, do you believe that that loss should be compensated by charging Rockford, or any other locality, a higher rate?

A. Well, the southern Illinois rate to Chicago, of $2.05 for an average distance of 334 miles, is 63.1 per cent of the H. & H. scale. The southern Illinois rate to Rockford, the proposed rate to Rockford of $2.25 is 65.6 per cent of the Holmes & Hallowell scale.

By Exam. Trezise:

Q. That is without the Ex Parte 148 advance?

A. That is right. So the proposed rate to Rockford is very little higher in level than the present rate to Chicago.

By Mr. Bather:

Q. But it would be higher.

[fol. 567] A. What I gave you, 65.6 per cent.

Q. And I assume that you adhere to your position that the rates from Illinois mines, Indiana mines, and west Kentucky mines, to Chicago are not the fair measure of the rates to Rockford, Illinois?

A. They are depressed rates, and I do not think that level should be reflected in the rates to Rockford. As I understand, as I explained in my direct testimony, the same competition that exists at Chicago does not prevail to a great extent at Rockford. I have in mind the large volume of eastern coal.

Q. Well, now, to what extent is eastern coal used for industrial steam purposes, as compared with the coal used by the industries originating in Illinois, Indiana and west Kentucky?

A. At Rockford?

Q. No, at Chicago.

A. Well, the total volume of coal coming into Chicago amounts to about 27 million, 28 million tons a year.

Q. Where does the bulk of that coal come from?

A. From the East; from the eastern districts, eastern movement.

Q. Did you state that correctly, 27 million tons from the eastern district to Chicago?

A. No, that is the total movement.

Q. What portion of that comes from the East, from the inner and outer crescent, for example?

A. I think there is an exhibit in here, Mr. Bather, that [fol. 568] shows that information. It is Section 9 of Exhibit 4, which consists of two pages. And using the latest year, you will find that the movement from Illinois mines to the Chicago district is 5,796,787 tons; that was 19.505 per cent of the total movement into Chicago.

The total movement—shown down at the bottom of the column, 30,422,000 tons. Now, the eastern fields; that is,

Ohio and inner and outer crescent disfributed 16,003,700 tons, which is 52.5 per cent of all the coal.

Then there was 4,500,000 tons came in via rail and lake. The total eastern movement was 20,537,000 tons, or 67.5 per cent of the total movement.

Q. To the Chicago district?

A. Yes, sir. Does that answer your question?

Q. Yes, it does. Now, have you got the figures to show how much coal from the eastern district went to Rockford?

A. I haven't that information. I do know there is some movement to Rockford, though. The dealers handle some eastern coal, and your gas company there handles eastern coal.

Q. But you don't know how much that amounts to?

A. Well, approximately it amounts to about 10 or 11 cars a day.

Q. Well, that is immaterial; now, you mentioned the rates from the Brazil-Clinton district to Rockford, via the Milwaukee, being $1.80 as compared with $1.97 from mines [fol. 569] on other roads in that group; do you know if there is any movement of coal from the Brazil-Clinton district on lines other than the Milwaukee to Rockford during the past several years?

A. No, I don't know. The Milwaukee does not serve mines that are located on the other railroads that have the higher rate. So, if they shipped anything to Rockford it moved over those lines under the higher rate. I don't know what the movement was. We do not participate in those rates, so I have no way of knowing.

Q. You don't know whether there has been any movement from Brazil-Clinton district to Rockford under the $1.97 rate, then?

A. I cannot answer that question.

Q. Do you know if there is a substantial movement via the Milwaukee from the Brazil-Clinton district to Rockford?

A. Yes, there has been; we switch part of it after it gets there.

Mr. Bather: I think that is all, Mr. Examiner.

By Mr. Cardy:

Q. Mr. Nelson, will you refer to the tonnage statement; I believe it is in Exhibit 4, Section 8, page 2, which shows the tonnage from northern Illinois to Dixon; I notice that there is no tonnage shown from Fulton-Peoria to Dixon, Illinois. For our information, and otherwise——

A. To Dixon?

Q. Yes, to Dixon.

A. Yes, there is, Mr. Cardy.

[fol. 570] Q. Will you give us the reference?

A. On line 2, column M, page 2; I note that during the first six months of 1941 there was 5,118 tons; and then on the same line, in column O, you will find that during the last six months of 1941 there were 2,622 tons.

Q. The question was, is that the full tonnage; our information was that that tonnage is incorrect.

A. The first six months of 1942, that is the total tonnage from Fulton County and Victoria. The Victoria tonnage was reported by the destination lines as originating in Fulton County.

Q. In other words, opposite Victoria there is no tonnage shown; is that correct? But it is shown under Fulton-Peoria.

A. That is correct; I can give you the separation of Victoria, if you would like to have it.

Q. I would like to have it.

A. During the first six months of 1941——

Q. This is coming from Victoria, to Dixon.

A. You understand, Mr. Cardy, this tonnage that I am giving you is included in the Fulton County tonnage on this statement.

Q. Yes, I understand that.

A. During the first six months of 1941 there were 66 cars shipped from Victoria to Dixon, 3300 tons. During the last six months of 1941, 36 cars, 1800 tons. During the first six months of 1942, 63 cars, 3150 tons. I have esti-

[fol. 571] mated the tonnage there.

Q. In other words, the large volume moving from the Fulton-Peoria district to Dixon was from Victoria; is that true?

Mr. Kaier: Well, he has given the figures.

By Mr. Cardy:

Q. Now, Mr. Nelson, in adjusting the rates from the northern Illinois districts to points in northern Illinois, will you state approximately how many destinations increases are proposed, to points in Illinois?

A. From northern Illinois?

Q. Yes; would you say approximately 310? That is what our records show, and probably show it accurately; that is about right; I would like to call your attention——

A. The rates were increased?

Q. Yes.

A. Oh, no.

Q. Well, about how many; what is your estimate?

A. I have not counted the number of destinations.

Q. Well, there are a great many; there is a large number anyway?

A. I think that 100 would be more nearly correct, than 300.

Q. Now I will ask you to state, in arriving at the proposed adjustment, have you increased the rates to this proposed territory by 20 cents a ton to the various destinations, regardless of distance for measure of rates; in other words, you took the rates as they were, and to some [fol. 572] destinations you increased them 5 cents a ton, to other destinations you increased them 10 cents a ton, other destinations you increased them 15 cents a ton; and to Rockford, 20 cents a ton; is that not right?

A. Northern Illinois to Rockford?

Q. 20 cents.

A. We increased it 15 cents per ton over the interstate rate.

Q. You did not increase it 20 cents a ton to Rockford?

A. 20 cents a ton over the state rates.

Q. From Wilmington, didn't you increase it,—which is a point in northern Illinois district—20 cents a ton; $1.05 to $1.25?

A. That is correct, $1.05 state rate; and the increase is 15 cents per ton over the $1.10 interstate rate.

Q. Now I wish you would refer to page 5 of Section 5 of Robertson's Exhibit, which shows the proposed adjustment to DeKalb in the northern Illinois field; from Marseilles the present rate, or the mileage, average mileage is 65.1 miles; the present rate is $1.05; you propose to in-

crease that to $1.10. Now, take the Granville rate, the distance is 72.6 miles; the present rate is $1.05, and there is no increase proposed. Now take the rate from——

Mr. Biaett: Now, wait a minute, Mr. Cardy; let us follow that. Is that on page 5 of Exhibit 4?

Mr. Cardy: Yes, Section 5, page 5. Do you have it, Mr. Bather?

[fol. 573] Mr. Bather: Yes, but I do not check the distance that you read into the record here. Marseilles is 77.5, and Granville is 96.3.

By Mr. Cardy:

Q. I will take those corrections; I will read it from the exhibit, rather than the memorandum. Now take Minonk, Illinois, 113.4 miles; the present rate is $1.50, and you propose $1.55. Now, at Wilmington the distance is 74.6 miles; present rate is $1.35, and the proposed rate is $1.40. In your direct examination, or in answer to a question under cross-examination, you stated that generally speaking rates from Illinois to this territory were largely paper rates; is that correct?

A. Except from Wilmington.

Q. You limited that, except from Wilmington. Now, in applying the adjustment from that distance, you just took the rates as they were, disregarding distance, disregarding point of origin, disregarding destination, and added anywhere from 5 to 20 cents a ton; isn't that true, shown by your exhibit, generally speaking?

A. Where we added 5 cents a ton,——

Q. I know the reason for it, but isn't that a fact, that you did increase some 5 cents, some 10 cents, some 15 cents, and some 20 cents?

A. That is correct. It was necessary to handle it that way because of 4th Section difficulties.

[fol. 574] Q. And that there was no regard paid to distance; distance was not a factor in determining the level of rates that should apply in the northern Illinois field to destinations involved.

A. We increased the present rates a uniform amount.

Q. The distance was not any factor, was it; you do not consider distance?

A. We have shown the distance; we have shown you the level of the proposed rate.

Q. Now, just answer the question; you do not take distance into consideration in arriving at the rate from northern Illinois to DeKalb, do you?

A. We endeavored to apply uniform increase, so as not to disturb the relationship.

Q. Without taking up each one of the points separately, would you say that the situation at DeKalb is substantially the same as the situation at the other typical points of destination you have shown? You can answer that yes or no.

A. Well, we followed the same formula. I would like to point out this fact——

Q. Just answer the question.

A. Production at Granville——

Q. I want to ask you this: Whether or not you considered whether there was any movement on the present rates to destinations in the destination territory.

[fol. 575] A. We show movement under present rates.

Q. Take it to DeKalb: Isn't it a fact—refer to page 2 of Section 8, Exhibit 4; the last year, that shows that there has not been a pound of coal from the entire northern Illinois field.

A. There were 50 tons during the first six months of 1941.

Q. And that is the only movement; the last movement was the first six months in 1941; no movement in 1942.

A. It does not show any. Some of the other points, there is movement.

Q. All very slight.

A. There was movement to Dixon; a good sized movement to Freeport.

Q. How much movement to Dixon during the last——

A. 90 tons, the first six months of 1941.

Q. How many tons?

A. 90 tons. Freeport, during the first six months of 1941 there were 5,178 tons; the last six months of 1941, 4,555 tons; the first six months of 1942, 4,880 tons.

Q. That is from the northern Illinois district?

A. That was to Freeport; yes, sir, that is from the northern Illinois district.

Q. And that was to Freeport?

A. Yes, sir.

Q. Now, to these points——

[fol. 576] A. Here is Rockford, movement into Rockford was 5,900 tons in the first six months of 1941; 8,613 tons the last six months of 1941; and 1600 tons the first six months of 1942.

Q. Now, in 1941, give us the total tonnage that moved to Rockford, will you, from the northern Illinois district?

A. For the entire year 1941, northern Illinois to Rockford, 14,548 tons.

Q. How many in 1942?

A. The first six months, 1600 tons.

Q. In other words, it is fair to assume that there was a falling off of nearly 10,000 tons on the present rates, movement of coal from northern Illinois, probably Wilmington to Rockford; is that true?

A. Well, there was a decline in movement; it may not have been caused by the rates.

Q. In other words, rates might not have anything to do with that.

A. That is possible. 1942 has been somewhat of a peculiar year, due to the war.

Q. And the sole cause might have been the rates, the change in the rates to Rockford.

A. There wasn't any change in the rates.

Q. Didn't you increase the rate recently from Wilmington to Rockford 5 cents a ton?

A. 5 cents a ton?

[fol. 577] Q. Yes; it was $1.00, and went up to $1.05.

A. Under Ex Parte 148, yes.

Q. You don't know whether that 5 cents a ton had a material effect on the movement of that tonnage, do you?

A. All coal rates went up the same amount, so that could not have caused the decrease.

Q. Now, Mr. Nelson, we have a situation like this: short haul rates from northern Illinois, where they are trying to line up the entire adjustment of rates between Illinois and Indiana, and you find that there are practically no movements from the short haul points to destinations involved, can you tell me upon what theory you say that the present rates that you have increased could possibly be an undue burden on interstate commerce in any form whatsoever; in any manner; and if so, which—well, just answer the question. In other words, I will make it easy for you: is the situation in northern Illinois, entirely different from the

situation we have in the differential field, you might say, or those that are differentially related.

A. The average level of the Wilmington rate to the suspended points is 79.1 per cent of the H. & H. scale rate. Compare that with present rates to the comparative points; you will find that the present rates to comparative points are 83.3 per cent of the scale. In other words, the Wilmington rates are 4½ per cent lower.

[fol. 578] Q. What are you going to do about these rates that are about 130 per cent, that you increased from the northern Illinois field about 130 per cent of the H. & H. scale? I just want to find upon what possible theory can you disregard distance entirely, disregard rates, and disregarded destinations; you must say that those rates are an undue burden on interstate commerce by the H. & H. scale.

Mr. Stadell: Mr. Examiner, may we have that question read? I couldn't understand it, and I cannot see how the reporter could understand it.

Mr. Cardy: I will restate it.

By Mr. Cary:

Q. Mr. Nelson, where distance measure of the rates was not taken into consideration, how can you state that such rates are an undue burden on interstate commerce, by measuring those rates with interstate rates?

A. The rates that you have mentioned, these 130 per cent of the H. & H. scale are paper rates.

Q. Well, do I understand that all of the rates—do I understand that practically all of the rates——

A. The Wilminton rate is not that high; that is one that moves traffic.

Q. Well, that is true; what is that rate?

A. Proposed rate from Wilmington to Polo, Illinois, for example,——

Q. What about these other rates; if your method of com- [fol. 579] putation is right from some of them, the same rule ought to be applied to Wilmington.

A. As I explained in my direct testimony, we endeavored to increase all the rates the same amount; where we increased the rate 5 cents a ton from one district we endeavored to increase it the same amount from all the districts.

Q. In other words, as I understand, it is your contention that mere distance in using the H. & H. scale to find out what the percentage difference in distance indicates, a different level in the rates, and that is in all these answers you have given the basis for contending that the Illinois rates are on too low a level; is that true, generally speaking?

A. Yes; the proposed rate to Rockford from Wilmington, 76.7 per cent of the scale.

Q. Just answer my question.

A. To Rochelle is 78.8 per cent; to Polo it is 59.9 per cent. Those are not high rates; they are low rates.

Q. Disregarding whether there is any movement to the destination, or whether there is a falling off, any of those factors you did not take into consideration in ascertaining whether or not the present rates in Illinois are an undue burden on Interstate commerce, is that true?

A. Well, I testified in my direct testimony the reduction to a number of these points from northern Illinois is [fol. 580] small, and a large part of it is going trucks. I explained, I understand where a fine coal is shipped—I outlined in detail the reason for the fact that there was no movement under some of these rates. You are talking about rates that move no coal.

Q. Now, your Exhibit 11, just one question on that: That merely deals with the level of rates, the measure of rates, as you might say; does that indicate either one way or the other, whether or not the intrastate rates in Illinois are more profitable than the interstate rates moving to this destination territory; in other words, while the level might be thin, might not the revenue be just the reverse, so far as this exhibit indicates?

A. This exhibit merely indicates the level of the rates, the average level of the rates.

Q. And the level would not necessarily indicate the relative revenue, or whether or not one set of rates is more profitable than the other set of rates; is that true?

A. This exhibit does not show that.

Q. Just one other question: There has been a good deal of talk about this Indiana situation; Mr. Nelson, the Illinois Central, which serves the southern Illinois field direct to Rockford, similar to the Milwaukee Railroad, reduced their rates 17 cents a ton from their mines; would you consider that a serious matter, so far as operators on your line were concerned, or would you consider it a disturbance of

[fol. 581] a long established adjustment of coal rates obtaining in this terri ory; and would you do anything about it?

A. They published the rate.

Q. I am asking you, suppose we had a comparable situation here in Illinois; what would you do about it; would you leave your operators pay 17 cents higher than the operators on the Illinois Central, shipping to Rockford? Answer that the way you want.

A. They reduced their rates to the Milwaukee basis.

Q. You would reduce your rates to the Milwaukee basis?

A. I say they did; we do not serve——

Q. No; you understand the question I asked you: whether or not the Illinois Central, southern Illinois to Rockford, reduced their rate 17 cents a ton; what would you do, so far as your operators are concerned, would you permit that condition to exist, or would you reduce your rates to meet the Illinois Central, or would you try to get the Illinois Central rates up to their proper level?

A. You are assuming we serve the same district in Indiana.

Q. No, just putting forth a comparable situation, that we have in Indiana.

A. We made no change in the rates from Illinois.

Q. Well, you do not want to answer the question, is that it? Do you understand the question?

A. You want to know what I would do if the Illinois Central——

[fol. 582] Q. I want to know what your company would do to protect the shippers on your line of railroad if the Illinois Central reduced their rate from southern Illinois to Rockford 17 cents a ton, just the same as the Milwaukee reduced their rate from the mines on the Milwaukee Railroad to Rockford, Illinois?

A. I beg your pardon; I thought you were asking about Indiana. We serve Illinois fields, southern Illinois fields; and if the Illinois Central reduced their rate 17 cents a ton, we would possibly meet it. We would have to, if we got any business.

Q. In other words, in this territory here that is a test on the rates in this territory here, southern Illinois Linton district is a departure from any adjustment, practically, they would have in northern Illinois, is it not?

A. I didn't understand your question.

Q. I mean the adjustment that we have from Sullivan-Linton field to Rockford, where one road takes out certain mines in a fixed and established group, which mines are related to a number of other groups, and reduces the rates from those particular mines, it is against all the theories at least of rate making on the movement of coal from the Illinois and Indiana mines to destinations in Illinois and Indiana; is that true?

A. There must be a reason for it.

Q. Now, there is one other question: If the Illinois Cen- [fols. 583-647] tral also serves some mines in the Sullivan-Linton district—they have some mines there, do they not?

A. Yes, sir.

Q. Do you know whether or not they increased their rate to Rockford, or whether or not they have a lower basis of rates to Rockford than other mines in the district, and are on the same basis, I will say, as the Milwaukee rates?

A. The rate from Illinois Central mines Linton-Sullivan district to Rockford, applicable via Illinois General Railroad, is on the same basis as the rate applies via the Milwaukee.

Q. In other words, mines on the Illinois Central also take the Milwaukee basis of rates.

A. That is correct.

. . . . . .

[fol. 648] Q. Do you as an expert witness consider the question, I mean consider—or, strike the word consider—deem the question or the matter of the actual cost of hauling coal by carloads, or other quantities, for certain distances an important element in determining the question as to whether a given rate is adequate or compensatory?

A. The cost of handling the freight, of course, is something that should be given consideration.

Q. And by cost you mean actual out-of-pocket money incurred by the transportation system in hauling the freight for a given distance; that is correct, isn't it?

A. Yes, sir.

Q. Now, would you, going back to the question, in your opinion consider that an important element in determining whether a rate is compensatory or adequate, using your own words.

A. Sure.

[fol. 649] Q. Then, why haven't you in connection with this case, or the association, determined the actual cost to the system railroads in transporting the coal from the various areas to the affected points, and the comparative points, in arriving at the conclusions, opinions as to whether or not the existing rates are unjust and unreasonable or not, to use the words of certain other people in the case, improper?

A. I do not say the existing rates were non-compensatory.

Q. That was not what I asked you.

A. I said that they were low, compared with other rates; and not, in my opinion, bearing their fair cost of the traffic burden.

Q. Now, by those expressions, low and fair cost of the traffic burden, they refer only to comparative rates in other areas?

A. Comparing these rates with rates to the surrounding territory.

* * * * * * *

(Here follow 2 photolithographs, side folios 649A-649B-673)

[fol. 674] PETITIONERS' EXHIBIT No. 5

C. J. NELSON (resumed):

By Mr. Stadell:

Q. I would like to ask you a few questions, Mr. Nelson, about your Exhibits Nos. 8, 9, and 10. Have you them before you?

A. Yes, sir.

Q. Your Exhibit No. 8 shows the number of tons of coal produced and certain other information with respect to the distribution of the coal for the northern Illinois mines during the years 1937 to 1941. Your Exhibit No. 9 shows the same information for mines in the Fulton County district, Peoria County, and certain other individual mines during the period 1932 to 1941. Why did you start your Exhibit No. 8 with 1937 and your Exhibit No. 9 with the year 1932?

A. For no particular reason, except I wanted to show what I thought was representative production for recent years. The information contained in these two exhibits comes from the same source. The annual coal reports, Department of Mines and Minerals, State of Illinois.

Q. Which do you think is the more representative period, the period 1937 to 1941, or the period 1932 to 1941?

A. Well, I think that perhaps the longer period would—they are both representative, but I think perhaps the longer period would be more representative.

[fol. 675] Q. Now, on your Exhibit No. 9 you have in the fourth and fifth columns, which are headed slope mine, shaft and strip, and in the other the number of mines; but when you get down to Peoria County, for example, and Victoria, you have the number of mines shown between the two columns. Now, how can we determine what type of mines those are? For example, in Peoria County, how can we determine whether they are slope or shaft or strip?

A. Well, all of the mines in Peoria County are shaft mines, that is, all the mines with tonnages reported in this exhibit. The mine at Victoria is the strip mine. The mine at Alpha, shown at the top of the second page of this exhibit, is a shaft mine. The mine at Rushville is a strip mine, and the mine at Atkinson is a strip mine.

I think, Mr. Stadwell, that you will recall in my direct testimony I described the mines at these points and stated whether they were shaft or strip.

Q. Now, in the third column from the righthand side of the exhibit, under the heading "Sold to truck trade," this exhibit purports to show the number of tons of coal at mines in the various districts, and that would be coal either sold to trucks or that was trucked from the mine, as distinguished from tons shipped by rail, is that right?

A. That is right.

Q. And referring to Victoria, Illinois, in that column you [fol. 676] show no tonnage whatever sold to truck trade. But you know, do you not, that there was a large quantity of coal sold by that mine to the truck trade?

A. The coal company have a truck chute, which is located at Wataga, served by the Galesburg & Great Eastern Railroad, which transports the coal, the cars from the mine to the truck chute for a transportation charge. Therefore, the coal that was sold to trucks at the chute was not shown.

Q. That railroad is owned by the mining company?

A. That is right.

Q. And whatever transportation charge the mining company would pay the railroad would be in effect paid to the mining company itself, would it not?

A. Well, the Galesburg & Great Eastern Railroad is owned by the coal company and the charge on this coal would, of course, go into the coffers of the railroad.

Q. Approximately how much of the tonnage from the mine at Victoria was sold in that manner to the truck trade, do you know, in 1941, as illustrative?

A. I don't know the exact tonnage, but the estimate that I have is about 50,000 tons in 1942.

Q. Where did you secure that estimate?

A. From our local people in the Galesburg territory.

Q. Now, will you refer to your Exhibit No. 10, please, page 2. You show there from southern Illinois to Illinois [fol. 677] destinations, except Chicago, Peoria, Pekin, East St. Louis and St. Louis, you show a total of 3,288,637 tons in 1941, is that correct?

A. Yes, sir.

Q. Included in that are several hundred thousand tons of coal that moved from southern Illinois to Alton and East St. Louis, Illinois; that was moved outside the State of Illinois by barge, is there not?

A. Yes, sir—not to East St. Louis. The East St. Louis would be shown under East St. Louis. But the Alton tonnage would be included in the columns that you refer to, in the 3,288,000 tons, the Alton tonnage would be in there.

Q. In other words, that tonnage was not consigned to any point in Illinois for ultimate use in Illinois. It was consigned to Alton for ultimate use at St. Paul, Minneapolis, or some point outside the state of Illinois?

A. It was shipped to Alton for movement by barge beyond, and was not consumed at Alton.

Q. Then, in connection with the East St. Louis tonnage that you show in the last column of page 2 of Exhibit No. 10, the tonnage there for 1940, 1941, and probably 1939, would also include the barge, tonnage that was shipped from the southern Illinois district to East St. Louis for transhipment beyond by barge, outside the state?

A. Yes, sir.

Q. Would that same thing be true with respect to the total [fol. 678] tonnage you show from the Belleville, Illinois, district to Illinois miscellaneous destinations and East St. Louis?

A. Yes, sir.

Q. And also the DuQuoin, Illinois, district?

A. Yes, sir.

Q. Now, in Exhibit No. 10 you show the tonnages shipped from the origin groups to the destination territory included in the exhibit for the years 1932 to 1941. Are you aware of the fact that there was a miner strike in 1932 that closed down the Illinois mines for some period of time during that year?

A. I don't believe that I remembered that, Mr. Stadell. At least, I did not take it into consideration when I had this exhibit prepared.

Q. If the mines only operated nine or ten months during the year 1932 because of the miner strike, do you think it would be fair to draw a comparison between the reduced tonnage shipped in 1932 and the tonnage shipped in 1941 for a full year?

A. No, I wouldn't.

Exam. Trezise: I am not following your reduced tonnage. Are you talking about page 2 of Exhibit 10?

Mr. Stadell: I am talking about the entire exhibit.

Exam. Trezise: Well, it does show in the entire exhibit there was a reduced tonnage in 1932, page 2, does it not?

Mr. Stadell: The point is this, Mr. Examiner, that he begins the showing in the exhibit with the tonnage shipped [fol. 679] during the year 1932. I asked him if he was aware there was a miner strike during that year and because of the miner strike the mines were shut down one or two months, and therefore, were able to operate and ship coal but approximately ten months during that year.

Exam. Trezise: I am assuming there was a reduction in 1932. I noticed the very first page No. 2, there was an increase—not an increase, but there was more moved from southern Illinois in 1932 than in 1933 or 1934.

Mr. Stadell: We are comparing 1932 with 1941.

Exam. Trezise: Well, you were going to ask him if there was a strike in 1933 and 1934 too, then?

Mr. Vesey: No, but I assume as part of that Mr. Stadell would show those conditions as prevailing in those years, 1932 and 1933, as non-comparable years to the year 1941. I presume that is part of the showing.

Mr. Stadell: Yes, that is right. It would probably be better if we show the thing in our testimony, rather than through this witness, if he is not familiar with it.

Exam. Trezise: All right, thank you.

By Mr. Stadell:

Q. You were asked some questions before when you were on the stand by Mr. Wilkinson with respect to an alleged destruction on the differentials between the Indiana groups to the territory involved. Is there any order of the Interstate Commerce Commission that requires the present dif- [fol. 680] ferences in rates between the Indiana groups themselves or as between the Indiana groups, on the one hand, and the Illinois groups, on the other, to the territory involved, to be maintained?

A. I do not know of any.

Q. Have the differentials between those groups as I have stated them ever been prescribed by the Commission, to your knowledge?

A. Not to my knowledge. I think they are voluntary adjustments made by the carriers.

Q. Did the railroads or the Illinois Freight Association make any study to determine whether there has been any increase or decrease in the tonnage either from the Illinois

mines or from the Indiana and Western Kentucky mines to the Northern Illinois territory involved in these proceedings during the last several years?

A. No, sir, not that I know of.

Q. You don't know then whether the tonnage from the Illinois mines to the territory involved has increased or decreased in comparison with the tonnage from the interstate mines in Indiana and Western Kentucky?

A. Except as might be reflected by this Exhibit No. 10, which is not very definite. You can't segregate the tonnage to this particular territory in Northern Illinois.

Q. And you and the carriers do not know whether the tonnage from the Southern Illinois to the Northern Illinois [fol. 681] suspended points has decreased or increased in relation to the tonnage shipped by those mines to the comparative interstate points, do you?

A. We made no particular study that I know of.

Exam. Trezise: And your question relates to the rail movement alone, does it?

Mr. Stadell: That is correct, yes.

By Mr. Stadell:

Q. You said that the carriers had determined that the intrastate rates from the Illinois mines to the Northern Illinois territory involved were not bearing their fair share of the transportation burden. What is that transportation burden that you had reference to and how much of it are the present intrastate rates bearing?

A. I think I expressed an opinion, Mr. Stadell, that was based on the level of the rates to the representative suspended points, which the carriers are using in this case, compared with the level of the rates to the representative comparative points, and it shows that the former is lower than the latter. My opinion was based on that fact.

Q. Well, you do not know then what the transportation burden that you referred to is in dollars and cents or what proportion of it the present intrastate rates are bearing?

A. No.

Q. Your opinion that they were not bearing a fair share of that transportation burden is based solely upon the [fol. 682] showing made in your Exhibit No. 11, which compares the present and suspended rates from the various

groups to the suspended territory and compared territory by use of the Holmes and Hallowell Scale?

A. That is right.

Exam. Trezise: Do you mean that that is the only comparison that you have in your Exhibit 11? You compare something besides with the Holmes and Hallowell Scale, do you not?

Mr. Stadell: Not in Exhibit No. 11, no.

Exam. Trezise: It doesn't do that?

Mr. Stadell: As a matter of fact, that is all the record contains, the entire record.

Exam. Trezise: I got the impression that there was a comparison there of the representative suspended rates with the representative comparative rates as well as with the Holmes and Hallowell Scale.

Mr. Stadell: By use of the Holmes and Hallowell Scale.

Exam. Trezise: Yes, but at the same time the rates are there. You can see what they are and you can compare the representative suspended rates with the representative comparative rates, if you didn't have any Holmes and Hallowell Scale there. That is the only point I make. There is nothing profound about it at all.

Mr. Stadell: That is right, you can compare the rates in dollars and cents.

The Witness: Mr. Examiner, the Holmes and Hallowell [fol. 683] Scale was simply used as a yardstick to measure the rates.

By Mr. Stadell:

Q. Well, you followed the Commission's decisions in these coal cases for a long period of time, have you not, Mr. Nelson, and haven't you read repeatedly where the Commission has said that the Holmes and Hallowell Scale is an improper yardstick to use to compare rates from various origins wherein distances vary, where you have short hauls versus long hauls?

A. I don't recall that they have said that factor. They have used it in many rate cases. But you could use most any yardstick you would want to in this instance and I think it would reflect lower level rates.

Q. But you didn't use any other yardstick but the Holmes and Hallowell Scale, did you?

A. That was all that I used.

Exam. Trezise: Well, you did show the distances though. You showed the distances to twelve destinations, from Alpha, and the distance is 135 miles and the rate is $1.51 proposed. From Alpha to the 14 destinations the distance is 134 miles, one mile less, and the rate is $1.62 or 11 cents higher. That is a comparison, isn't it?

The Witness: Oh, yes, surely.

Exam. Trezise: You don't have to have the Holmes and Hallowell Scale to bother with there, do you?

The Witness: Oh, no. You can make comparisons.

[fol. 684] Mr. McElroy: Do you use anything else in making the freight rate other than the distance?

The Witness: Oh, yes.

Mr. McElroy: What do you consider besides distance?

The Witness: Well, the volume of the traffic involved and the competition that is involved, the average loading traffic per car, and possible claim expense that might be involved, various things; there are many things which you consider.

Mr. McElroy: At any place in these exhibits do the conditions or things you have just described show up, that is, are they reflected in your exhibits anywhere?

The Witness: No, I think not. These exhibits are based on distances.

Mr. McElroy: Where the volume of traffic is heavy as compared to another point where the volume of traffic is light, do the freight rates differ or should they differ?

The Witness: Well, it all depends.

Exam. Trezise: You are going to use transportation conditions there, too? If you cross a bridge going to one place would you charge more than if you didn't have to cross the bridge, is that what you mean?

The Witness: Well, in a general way, yes. You take all those things into consideration, Mr. Examiner.

Mr. McElroy: But these exhibits just take into consideration the distance, is that right?

[fol. 685] The Witness: These exhibits show some tonnage data. I think that there is some tonnage information in Robertson's exhibit.

Exam. Trezise: Your Exhibit 11 is merely a summary and the average of distances and rates?

The Witness: That is correct.

By Mr. Bather:

Q. In other words, Mr. Nelson, as I get your testimony, your opinion was based entirely upon the comparison of the rates to the 12 destinations involved as compared with the 14 representative destinations, that is, the rates and the distances? Is that the basis of your opinion, that the rates to the affected territory to which the rates are now under suspension are too low on that theory?

A. I don't believe I understand your question, Mr. Bather.

Q. Well, I am trying to get at the basis of your opinion. Now, as I analyze these exhibits, your opinion is based entirely upon a comparison of the rates from the different origin groups to the 12 representative points, or the 12 representative points in the territory affected as compared with the 14 comparative points.

Mr. Vesey: If the Examiner please, I will object, as a courtesy to my brother Mr. Stadell. He started a line of cross-examination and he was interrupted. As far as his cross-examination is concerned, I submit the whole trend and tenor has been lost. I think as a courtesy to him, I will object.

[fol. 686] Mr. Bather: All right, I will reserve my cross-examination.

Exam. Trezise: Well, I think the Examiner will apologize to Mr. Stadell. He should be permitted to finish his cross-examination. We will ask that he kindly accept our apology. Go ahead, Mr. Stadell.

By Mr. Stadell:

Q. Well, coming back, Mr. Nelson, to the answer you gave to Mr. McElroy about the elements that you take into consideration in measuring rates, and one of the elements that you gave was the average loading per car, is that right?

A. Yes, sir.

Q. You are familiar, are you not, with the statement made by the Commission in its report in the Holmes and Hallowell case that the loadings of coal from the Lake Superior dock, which moved on that scale or for which the scale was prescribed, was in box cars and averaged but about 35 tons per car as compared with an average loading of 50 tons per car from Illinois in open top cars?

A. Yes, sir.

Q. Do you think that is an element to be taken into consideration when you use the Holmes and Hallowell Scale, when measuring the rates from Illinois mines to Northern Illinois points?

A. Well, Mr. Stadell——

Q. Well, answer the question. Do you?

A. As I stated before——

[fol. 687] Q. Is it an element to be taken into consideration in measuring the rates when you use the Holmes and Hallowell Scale?

A. I don't think so in this instance, because we simply used the scale as a measuring stick, and we could use some other scale if we wanted to and get a similar result.

Q. And the scale was prescribed to apply on coal that moved in quantities of about 35 tons per car, and you are using 100 per cent of that scale to measure the rates on that scale?

Mr. Kaier: He just told you he wasn't, Mr. Stadell. He told you he was measuring one point against another.

Mr. Stadell: And he is also, as I understand it, using the Holmes and Hallowell Scale to show what percentage the rates in this territory should be in this scale. He made that in his testimony. He said the Commission had prescribed rates in this territory 85 per cent of the scale.

By Mr. Stadell:

Q. Well, you haven't given any consideration to that in your Exhibit 11 or the exhibits where you use the Holmes and Hallowell Scale as a yardstick, have you?

A. No. We took into consideration the distances.

Q. The distances and the scale?

A. The distances and rates, and we measured the rates and the distances by using the scale. The fact that the average loading from the Duluth-Superior docks might be——

Q. Well, you have answered sufficiently.

A. (Continuing) —might be lighter or heavier than it is [fol. 688] from Illinois didn't make any particular difference, as I see it, in so far as this comparison is concerned.

Q. Well, you didn't give any consideration to that element; you just applied the scale to the distances in the exhibit?

A. Used it as a yardstick.

Q. Another element you referred to was claim expense. Do you know of any commodity on which the claim expense is less than on coal?

A. Oh, yes, I think there are other commodities. However, the claim expense on coal is not very heavy.

Q. What are other commodities you have reference to?

A. Sand, gravel.

Q. How does the claim expense on those commodities compare with the claim expense on coal, do you know?

A. It would be slightly less, it is my recollection.

Q. Another element you referred to was the volume of traffic. By that do you mean where the volume of traffic was heavy that the rates could be lower than where the volume of traffic was light—on a lower level?

A. Oh, not in all instances, no, sir.

Q. Well, what would the instances be where that element would not apply?

A. Well, Mr. Stadell, I was asked a question about the various things that are usually taken into consideration in making freight rates. I attempted to answer that ques- [fol. 689] tion. I did not state that all of those things were taken into consideration in making this comparison.

Q. Well, I realize that.

A. We have a group adjustment here and many of these rates—for that reason you can't always measure rates on volume of traffic.

Q. Were you finished?

A. Yes, sir.

Q. Well, you know, do you not, that the volume of coal traffic and the volume of all traffic within Illinois is many, many times the volume of traffic from the Lake Superior docks to destinations in Minnesota and South Dakota to which the Holmes and Hallowell Scale was prescribed to apply, do you not?

A. Yes, that is true.

Mr. Bisceglia: How many times? Let us be a little more specific.

By Mr. Stadell:

Q. All right, how many times?

A. Well, I couldn't tell you how many times.

Q. Well, will you be willing to furnish that information?

showing us the traffic density in the territory in which the Holmes and Hallowell Scale applies and in Illinois, and furnish it sometime before the hearing is closed?

Mr. Biaett: Well, I am sorry, but I don't understand just what you want. One minute you ask for shipments of coal and the movement of coal and the next minute you ask for [fol. 690] traffic density.

Mr. Stadell: Well, for the traffic density in the states and over the lines of railroad over which the Holmes and Hallowell Scale applies from the Lake Superior docks, and by railroads in Illinois, that is, total traffic density, and if you can break it down as to coal I would like to have that too.

Mr. Biaett: Mr. Stadell, we are submitting the Holmes and Hallowell Scale as a yardstick by which to measure these rates and secure the percentages of the rates to the suspended destinations and the compared destinations. Now, the Commission in that report speak for themselves, and we are not asking for any particular percentage of that scale or for that full scale to be applied here. Now, there are a lot of other factors, other than what you mentioned. For example, the Commission in that case stated there was a return movement, an inbound movement of grain to the Lake Superior docks for which this equipment was used. It wasn't a 50 per cent empty movement such as you have in Illinois. There are a lot of other factors you would have to get into, if we are going to get into it at all.

Mr. Stadell: We would be willing to go into all of it.

Mr. Biaett: It is entirely up to you if you desire to go into them, but we are submitting the scale comparisons for the purposes shown on the exhibit.

Exam. Trezise: Well, Mr. Biaett, I am not following you. I got lost at that last corner, I guess. Now, Mr. Stadell, [fol. 691] may I ask Mr. Nelson a question.

Is it your intention to compare a reasonable rate with the relation that it bears to the Holmes and Hallowell Scale? Is that your intention, to do that? I didn't understand it was. But do you merely intend to use the Holmes and Hallowell Scale as a basic yardstick to compare two different sets of rates?

The Witness: The latter is true, Mr. Examiner.

Exam. Trezise: Now, in such measuring of these two rates, would it make any difference whether the loading

under the Holmes and Hallowell Scale was one ton per car or 50 tons per car?

The Witness: I think not, and I so explained in answer to Mr. Stadell's question.

Exam. Trezise: Now, how does that tie in with your statement?

Mr. Biaett: That is the point I was trying to make, Mr. Examiner, plus the fact that if we go into these elements concerning the inherent reasonableness of the Holmes and Hallowell Scale as applied to this territory, we have got to go into all of them.

Exam. Trezise: Well, it is the Examiner's understanding that Mr. Nelson is not using the Holmes and Hallowell Scale for that kind of a purpose at all.

Mr. Biaett: Well, that is my understanding also, Mr. Examiner.

[fol. 692] Exam. Trezise: It wouldn't make any difference what the loading was under the Holmes and Hallowell Scale, if you use that Holmes and Hallowell Scale merely as a basic yardstick to compare two sets of rates.

Mr. Wilkinson: Mr. Examiner, may I interject here, with Mr. Stadell's permission, that in so using the Holmes and Hallowell Scale you must assume like transportation conditions between the compared rates.

Exam. Trezise: That is right.

Mr. Wilkinson: And I am wondering whether or not Mr. Nelson in his Exhibit No. 10 is assuming like transportation conditions, as to the movement of coal from Illinois and Indiana to this territory and with the movement of coal from Western Kentucky to this territory.

Mr. Stadell: Exhibit 11 that is, Mr. Wilkinson.

Mr. Wilkinson: Or Exhibit 11. He has made no distinction between them, but I am wondering if he intends to assume that the transportation conditions from Western Kentucky and Illinois and Indiana origin groups are the same.

The Witness: Well, Exhibit No. 11, Mr. Wilkinson, simply is a comparison of the rates and distances from the various origin districts to these representative destinations as measured by the use of the Holmes and Hallowell Scale. The transportation conditions are not reflected by this exhibit.

Exam. Trezise: Does that answer your question?

[fol. 693] Mr. Wilkinson: Yes.

Mr. Stadell: Mr. Examiner, I want the record very, very clear on the point you have raised here, and that is the purpose for which the respondent and petitioning railroads are offering the rate comparisons contained in their Exhibit No. 11 and other exhibits in which they use the Holmes and Hallowell Scale. What I have in mind is this—I may ask Mr. Nelson a question on this point.

By Mr. Stadell:

Q. In answer to the Examiner's question you stated that you were using the Holmes and Hallowell Scale in your Exhibit No. 11 and other exhibits purely and solely as a yardstick to measure the rates from the origin group involved to the representative suspended points as compared to the rates from those origin groups to the representative comparative points, is that right?

A. Yes, sir.

Q. And you are not offering those exhibits to show, for example, that the rate from the Southern Illinois District to the representative suspended points, which average 62.4 per cent of the Holmes and Hallowell Scale, is unreasonably low or in any respect otherwise unlawful merely because it is that percentage of that scale instead of being 85 per cent or 90 per cent, is that correct?

A. Well, I don't know that I understand your question entirely, Mr. Stadell.

[fol. 694] Q. Well, you say that you are using the scale merely to compare the rates to the suspended and the representative points. That is correct, isn't it?

A. Using it as a measuring stick in making the comparison.

Q. And the mere fact that the average rates from the Southern Illinois group to the 12 representative suspended points shown on Exhibit No. 11 average 62.4 per cent of the Holmes and Hallowell Scale is not to be taken as showing that those rates in and of themselves are unreasonably low or unreasonably high or otherwise unlawful?

A. Well, when you take that——

Q. Can't you answer the question, Mr. Nelson?

A. I will endeavor to.

Q. I would like to get an answer to that question. I want to know what this exhibit means.

Mr. Biaett: I think the purpose of the exhibit is apparent.

Exam. Trezise: Now, just a minute. The question is, do you consider the rates here under consideration unreasonable because they are a different percentage of the Holmes and Hallowell Scale, one way or the other? Is that it substantially?

Mr. Biaett: The question is a little bit broader than that.

Mr. Stadell: Well, read the question.

Exam. Trezise: Let the question be read then.

(Question read.)

[fol. 695] Mr. Stadell: I would like to get an answer. I would like to find out what the purpose of this exhibit is now. I would like to know whether the purpose is as Mr. Nelson stated to the Examiner or whether it is something else.

The Witness: Well, Mr. Stadell——

Mr. Stadell: Will you answer the question?

The Witness: I will endeavor to. I will have to answer it in my way. I can't answer it yes or no.

Mr. Stadell: Let us have a direct answer. You gave the Examiner a direct answer.

The Witness: Well, I don't remember what direct answer you are referring to.

Exam. Trezise: That direct answer was that "the latter is true." I said, do you merely intend to use it, meaning the Holmes and Hallowell Scale, as a basic yardstick to compare two different sets of rates, and you said, that was true.

The Witness: Yes, sir, that is true, and when by using that yardstick you show a certain level of rates to the representative suspended points and another level of rates to the representative comparative points, that is an indication, in my opinion, that the former is depressed or low. It should be increased. Now, you could use some other yardstick and make the same kind of a showing.

Mr. McElroy: You have said that half a dozen different times, but that doesn't answer the question Mr. Stadell [fol. 696] asked you.

The Witness: Well, I don't know that I could answer it any other way. That is the answer I know.

By Mr. Stadell:

Q. Let me ask you this, then: aside from the fact that the rates from the origin groups shown on your Exhibit No. 11 to the representative suspended points are a different percentage of the Holmes and Hallowell Scale than from those groups to the representative comparative points, what significance are we to attach to the percentages that you show the rates from those groups to the suspended points to be of the Holmes and Hallowell Scale? Standing alone, what does that section of your exhibit mean, if anything?

A. It means that the rates to the suspended points are low as compared to the rates to the representative comparative points, and that the carriers are endeavoring to increase them to a higher level, so as to be more in harmony with the general adjustment.

Q. Let us find out about that. You say that the rates are low. You mean merely because they are a different percentage of the Holmes and Hallowell Scale?

Mr. Kaier: Different than what?

Mr. Stadell: Than to the comparative points.

The Witness: That, in my opinion, is an indication.

By Mr. Stadell:

Q. That is the only reason you say they are low, is that right?

[fol. 697] A. Well, you could use the mileage, you could use mills per ton mile, you could use any other scale or yardstick and make a similar comparison.

Q. Well, because the rates from the origin groups involved to the suspended points are a little lower possibly as measured by percentage of the Holmes and Hallowell Scale or ton mile earnings than the rates from those groups to the comparative points, that is the reason that you say they are low, is that right? That is the only reason you say they are low?

A. The comparison shows they are low, Mr. Stadell.

Q. Well, that is the only reason, isn't it, that you say they are low?

Mr. Biaett: Are you confining the witness to this exhibit?

Mr. Stadell: Any of the exhibits you put in showing the

rate comparisons. This is merely a summary of them. What was your answer, Mr. Nelson?

The Witness: Well, this comparison shows they are low, Mr. Stadell.

By Mr. Stadell:

Q. I say, that is the only thing on which you base your opinion, that comparison, that they are low, is the only thing that you base your statement on, is that right?

A. Well——

Q. Did you answer the question?

A. No, I did not, Mr. Stadell.

Q. Well, what else have you got to show that they are low?

[fol. 698] A. There has been a lot of testimony put in this record.

Q. Yes, I know there has. I am trying to find out what it is all about.

A. And I think the testimony indicates——

Q. I don't want you to characterize the testimony, Mr. Nelson. The record will speak for itself. Let me ask you this——

Exam. Trezise: Could we find out, this Holmes and Hallowell Scale that you have on your Exhibit 11, is that the basic scale that the Commission prescribed or is it a present scale brought up to date? Which is it?

The Witness: It is a present scale brought up to date.

Exam. Trezise: With a seven and a half cents increase added?

The Witness: No. The general increases have been added.

Exam. Trezise: Of seven and a half cents, is that right?

The Witness: Ex Parte 115 increases have been added.

Exam. Trezise: Then it is not the scale that the Commission prescribed, but it is the scale brought up by seven and a half cents added, compared with your present rates with 15 cents added. I am making this point because somebody mentioned 85 per cent of the Holmes and Hallowell Scale, and that is certainly confusing to the uninitiated. When we spoke of 85 per cent of the Holmes and Hallowell Scale, we are speaking of the basic scale. But since that time the Holmes and Hallowell Scale has been increased seven and a half cents, and these other rates here, I guess [fol. 699] most of them have been increased 15 cents. So

there is a variation of seven and a half cents, and the question I was going to ask Mr. Nelson in that respect, it would be unfair then to undertake to compare the Holmes and Hallowell scale as prescribed with the rates under consideration which have been increased, a good many of them anyhow, by 15 cents.

The Witness: Well, Mr. Examiner, you stated the scale was increased seven and a half cents. We increased the scale in the same manner that the rates were increased, five, ten and fifteen, or whatever the increase was according to the rate.

Exam. Trezise: Oh, you did. Then these are not the rates that the railroads charge, this Holmes and Hallowell Scale, is that right?

The Witness: I stated we simply used that scale as a measuring stick, Mr. Examiner.

Exam. Trezise: My point then is that it would be unfair to use it in any other way than merely as a measuring stick of two other rates. That is what you told me a while ago.

The Witness: I don't know that I said it would be unfair.

Mr. Stadell: That is the reason I am confused. I don't know. One minute he says one thing and the next minute something else.

The Witness: Well, Mr. Stadell, I have said before and I will say it again that we made this comparison using the distances and the rates and the H & H Scale, the latter [fol. 760] being as a yardstick, to show the level of the rates to the suspended points as compared with the level of the rates to the comparative points.

Mr. Stadell: Well, I know all that. The exhibit shows that.

Exam. Trezise: Well, you know, Mr. Nelson, or is this a fact, that in order to make the increases in the Holmes and Hallowell Scale under which the coal moves from the Head of the Lakes you didn't add 15 cents, did you, in making those increases? You added only seven and a half cents. Is that right? Now, I am asking you.

The Witness: It is my recollection that we increased the scale according to the general increases or scale in 115, and we used that as a yardstick.

Exam. Trezise: All right, we will just let it stand that way. Is that your recollection, that it was seven and a half cents?

The Witness: No.

Mr. Kaier: Mr. Examiner, may we determine what the fact is as to how much the scale was increased?

Exam. Trezise: Yes.

Mr. Kaier: Apparently Mr. Nelson doesn't know.

Exam. Trezise: All right, let us go on, Mr. Stadell.

Mr. Stadell: Well, I had a question pending some time ago, to which I didn't have an answer. I don't know whether [fol. 701] I can get an answer or not, and that was on the point as to the purpose of the exhibit.

Exam. Trezise: Mr. Nelson is willing to answer all the questions he can. Now, you make them clear enough to him and I can almost guarantee Mr. Nelson will answer them.

Mr. Stadell: The only point I had in mind is I want to find out whether Mr. Nelson attached any importance or the railroads attached any importance to the fact in and of itself that the rates from the Southern Illinois District to the representative suspended points average 62.4 per cent of the Holmes and Hallowell Scale, whether it is their contention that because the rates are that percentage instead of being some other percentage or higher percentage, that that shows they are unreasonably low or unlawful. Now, that goes beyond the purpose that he stated this exhibit was for in all his answers to you.

Exam. Trezise: Can you say, Mr. Nelson, that that does go beyond the purpose of the exhibit and that the purpose of the exhibit was confined to the answers that you made to the Examiner's questions?

The Witness: Well, when that shows that it is 62.4 per cent of the scale that you use in making this comparison, in my opinion, that indicates that the rates are unreasonably low.

Exam. Trezise: In comparison with what percentage of the Holmes and Hallowell Scale of the rates that are in [fol. 702] existence to the comparative points?

A. Of 70.4 per cent.

By Mr. Stadell:

Q. And that is the sole comparison that we are to draw from your Exhibit 11 as between the percentage that the rates are to the suspended points and the percentage that they are of the Holmes and Hallowell Scale to the comparative points?

A. That shows the——

Q. Can't you answer the question yes or no? That is what you stated to the Examiner. I just wanted to be certain that that is the purpose of the exhibit and the other exhibits that show like comparisons.

A. Mr. Stadell, I don't think that question can be answered yes or no.

Q. Well, you mean that you don't know what the purpose of the exhibit is?

A. The purpose of the exhibit is to show the level of the rates that we are proposing as compared with the level of the rates to the comparative destinations.

Q. That is the only purpose, is that right?

A. To show——

Q. Is that the only purpose of the exhibit?

A. That is the purpose, one of the principal purposes of the exhibit, to show the level of the rates. They are low. They should be increased.

[fols. 703-704] Exam. Trezise: Do you mean the level of the rates are a lower percentage of the Holmes and Hallowell Scale than the other rates that you have cited in comparison?

The Witness: They are a lower percentage.

Exam. Trezise: Well, is that the purpose of the exhibit only?

The Witness: No, that is not the only purpose of the exhibit. The purpose of the exhibit is to show the level of the proposed rates as compared to the level of the present rates to the comparative points.

Exam. Trezise: And you measured that by the Holmes and Hallowell Scale?

The Witness: That is right. We used the H & H scale as a measuring stick.

By Mr. Stadell:

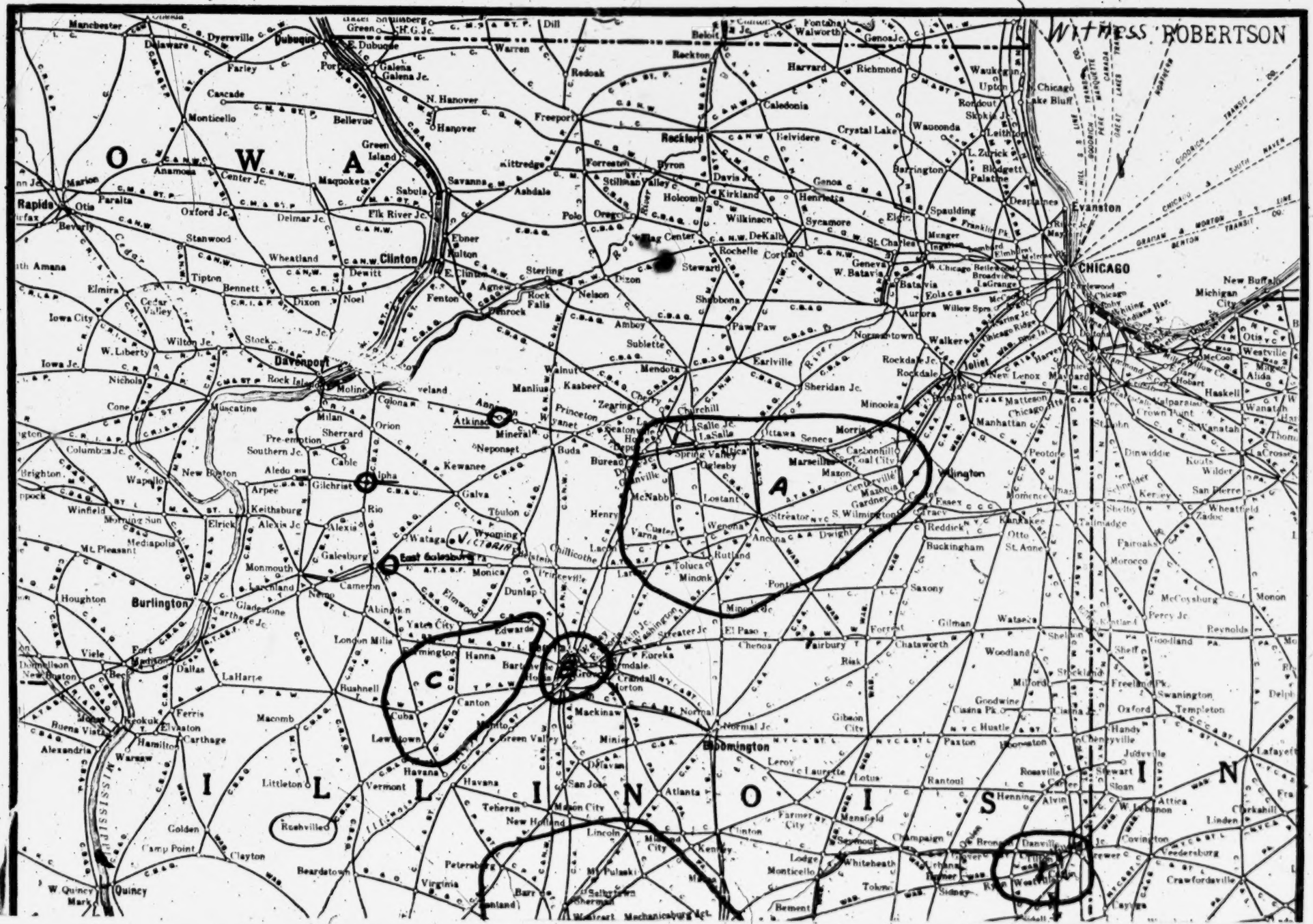
Q. You say the rates to the suspended points are low?

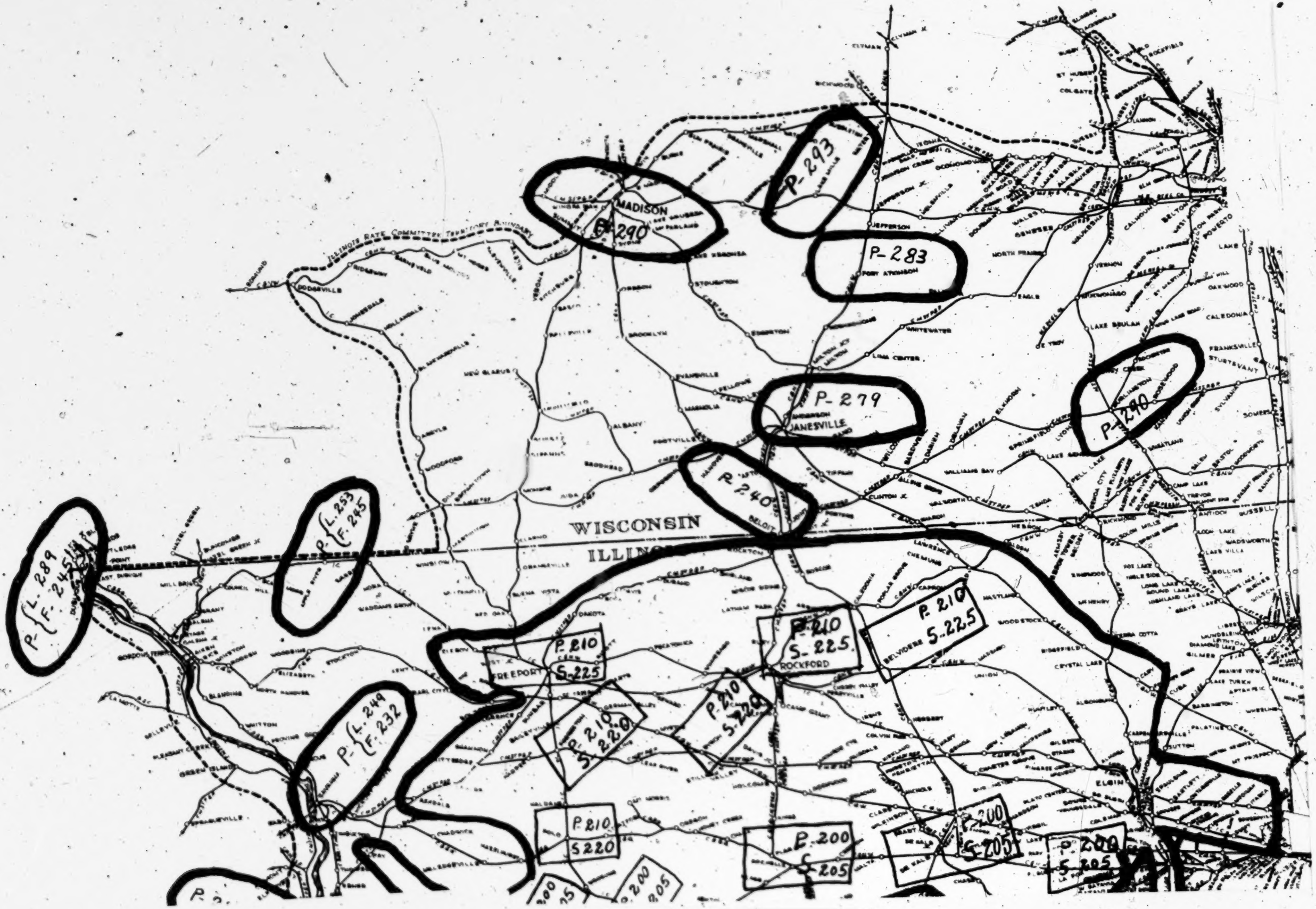
A. That is right.

Q. The rates shown on your Exhibit No. 11 and the other exhibits in the record of the railroads show the gross rate, that is, just the rate, and it shows nothing with respect to the revenue that the railroads receive for hauling this traffic, is that correct?

EXHIBIT NO. 1

COAL PRODUCING GROUPS IN ILLINOIS, INDIANA AND WESTERN KENTUCKY.




ILLINOIS RATE COMMITTEE TERRITORY BOUNDARY
MADISON
P-290
P-293
P-283
P-279
P-290
P-240
P-253
F-245
P-289
F-245
P-249
F-232
P-210
S-225
P-210
S-220
P-200
S-205
WISCONSIN
ILLINOIS
ROCKFORD
FREEPORT
ELGIN
JANESVILLE
BELVIDERE

PAGE

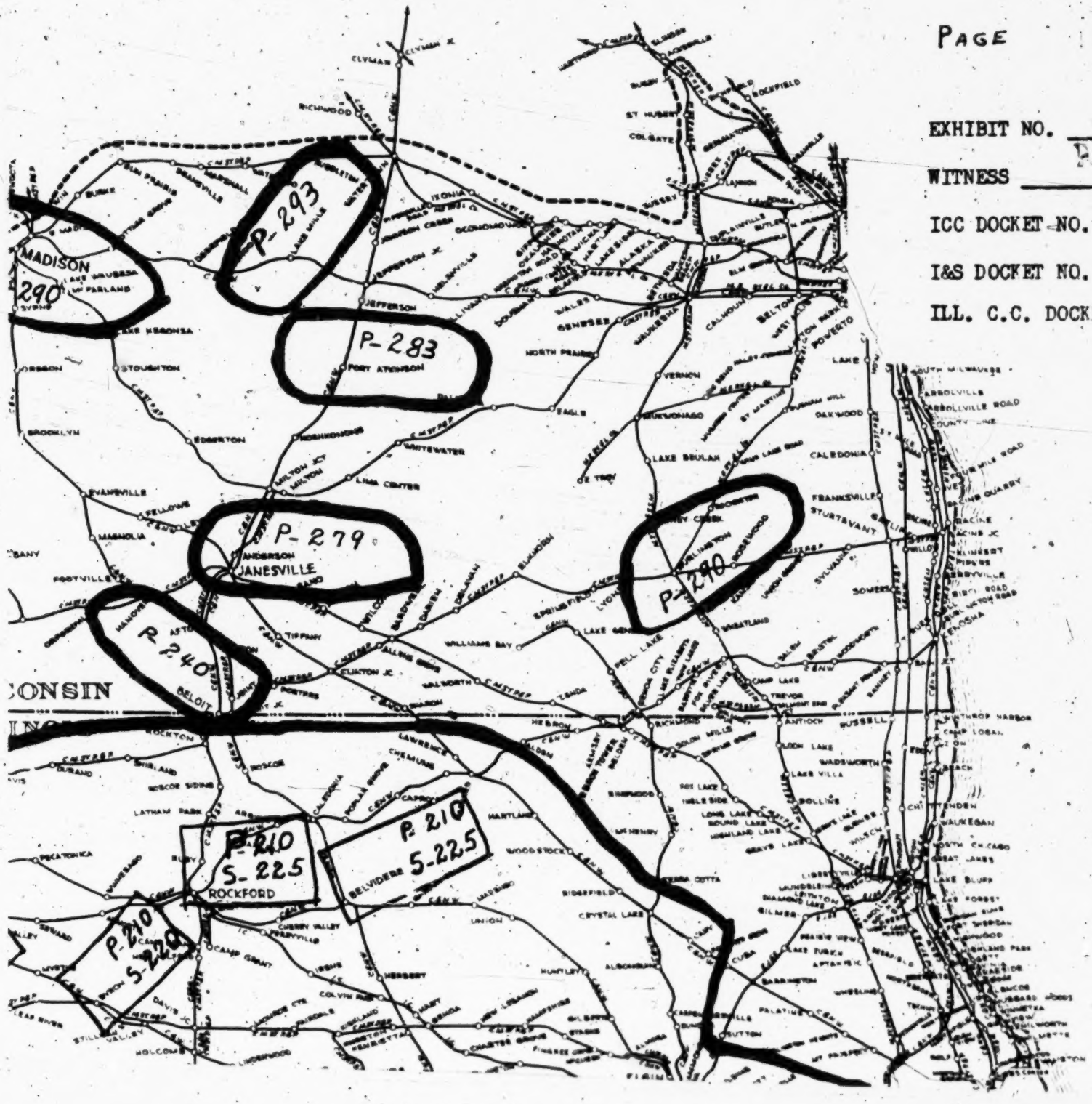
EXHIBIT NO. 2

WITNESS

ICC DOCKET NO. 28881

I&S DOCKET NO. 5139

ILL. C.C. DOCKET NO. 30935



A. Those are rates and the distances, gross rates, yes, sir.

. . . . . .

[fol. 705] Q. Aren't the railroads more interested in the net revenue than they are in a given percentage that a rate is of the H. & H. Scale?

A. Well, I would say so. We have shown some revenue to the representative points, Exhibit 4, that is gross revenues, Mr. Stadell.

Q. That is merely the rate applied to the tonnage moved?

A. Yes.

Q. That merely is gross revenue?

A. Yes.

[fol. 706] Mr. Vesey: Would his answer be the same if you would ask for the gross revenue instead of net revenue? I assume his answer would be the same, but I would like to have it in the record.

Mr. Kaier: Didn't he just say the record showed the gross revenue?

Mr. Hunter: He referred to Section 8 of Exhibit 4.

Mr. Stadell: It shows the tonnage and the rates on the tonnage to seven representative Northern Illinois points.

Mr. Vesey: That is all it shows.

By Mr. Stadell:

Q. During the course of his direct examination Mr. Hamilton stated that the proposed rates from the Indiana groups to the suspended points were in his opinion reasonable rates. Do you agree with that?

A. From the Indiana groups to the representative suspended points?

Q. Yes.

A. The proposed rates?

Q. Yes, the proposed increased rates.

A. We are supporting the proposed increased rates. I won't say they are 100 per cent perfect.

Q. Well, you would say they are reasonable?

A. We think they are reasonable rates.

Q. Would you say that they afford a proper yardstick to use in addition to the Holmes and Hallowell Scale, [fol. 707] possibly a more reliable yardstick to compare the

average level of the present and suspended rates from the Illinois field to the Northern Illinois points involved?

A. I don't understand that question, Mr. Stadell.

Q. Mr. Hamilton said, and you agree with his statement, that the proposed increased rates from the Indiana groups to the representative suspended points and to the representative comparative points are reasonable rates. As I understand you, you agree with that statement, is that right?

A. Yes, sir.

Q. And that being true, the average level of the rates from Indiana would be a proper yardstick to use in determining what would be a lawful level of rates or reasonable level of rates from the Illinois mines to the Northern Illinois points involved; that is another yardstick that could be used in addition to your Holmes and Hallowell Scale, is that right?

A. No, I don't think so. Some of them are according to what rates you are talking about.

Q. I am talking about the average level of the rates from Indiana.

A. I don't have the average level from groups as a whole.

Q. Well, if they are reasonable rates, why shouldn't they be a proper yardstick to be used in determining reasonable rates from Illinois mines to the same points?

A. Well, you have rates from Brazil-Clinton District [fol. 708] that average 71.7 per cent of the H & H Scale. Are those the rates you are talking about?

Q. Well, all right, I will just ask you this. You have agreed with Mr. Hamilton's statement that the proposed increased rates you are proposing from Indiana are reasonable rates. That is what you said, isn't it?

A. Well——

Q. To the suspended points.

A. Well, they are in the category of reasonable rates.

Mr. Stadell: All right, that is all.

Exam. Trezise: If you are through, we will have a few minutes recess.

(A short recess was taken.)

Exam. Trezise: Are you finished, Mr. Stadell?

Mr. Stadell: Well, I have just one more question that I would like to ask, if I may, and that is in connection with

the same point that I have asked several questions about. This question is in connection with your Exhibit No. 11, Mr. Nelson, and is based on your answer to the Examiner about the use of the Holmes and Hallowell Scale.

By Mr. Stadell:

Q. As I understand your answer to him, that the purpose for which you used the Holmes and Hallowell Scale in this and other exhibits that are in the record, was to compare the present and proposed increased rates from the various origin groups to the representative suspended [fol. 709] points with the present rates from those groups to the representative comparative points. In other words, you used the scale to show the relative level of those rates to the suspended and to the comparative points?

A. That is correct.

Q. And that is the purpose of this and the other exhibits that contain those comparisons?

A. The purpose of the exhibits is to show the level, if that is your question.

Q. To the comparative and suspended points?

A. That is right.

Q. And the mere fact the exhibit shows that the average level of the present rates to the suspended points are 62 per cent or some similar percent of the Holmes and Hallowell Scale is not to be taken as an indication or as showing that that indicates that the rates are depressed or unreasonable, in and of themselves?

A. Oh, just the opposite. I think it is an indication that they are depressed, when you compare them with the higher per cent to the representative points.

Q. Just forget the comparisons to the comparative points and confine yourself to the percentages that the rates from Illinois are as shown by your exhibits to the suspended points.

Mr. Biaett: You mean the proposed rates, Mr. Stadell, or the present rates?

[fol. 710] Mr. Stadell: The present rates.

The Witness: Well, the comparison in Exhibit 11 is with the proposed rates to the suspended points.

By Mr. Stadell:

Q. Well, there are other exhibits here. I see that this is a comparison of the suspended rates. There are other exhibits placed in the record here by the railroads which show the percentage that the present rates are, Exhibit No. 3 or 4, I believe, that show what percentage the present rates from the Illinois groups to the Northern Illinois points are of the Holmes and Hallowell Scale, is that correct?

Exam. Trezise: Well, why did you leave Exhibit 11? Exhibit 11 shows that thing that you are talking about.

Mr. Stadell: It shows the per cent of the proposed increased rates.

Exam. Trezise: You mean the representative comparative points in Exhibit 11, it doesn't appear there? That last column is the representative comparative points.

Mr. Stadell: Yes, I know that. I am talking about the present rates from the Illinois groups to the representative suspended Illinois points.

Exam. Trezise: All right.

By Mr. Stadell:

Q. Refer to Mr. Robertson's Exhibit No. 4, Section 3, page 12, which shows the average mileages and the present and suspended rates from the Illinois-Indiana group to Rockford.

[fol. 711] A. That is based on the suspended rates too, the H & H Scale comparison.

Q. Well, all right, take the suspended rates from Southern Illinois to Rockford shown as 65.6 per cent of the Holmes and Hallowell Scale. Does the mere fact standing alone that that rate is 65.6 per cent of the Holmes and Hallowell Scale, do you intend that to indicate that that rate in and of itself is unreasonably low or unlawful?

A. Well, Mr. Stadell, I think the fact it does indicate it is that per cent of the H & H Scale shows that it is certainly not unreasonably high. These are the proposed rates that we are endeavoring to put into effect.

Q. So that you are, contrary to your answer to the Examiner, using the Holmes and Hallowell Scale to measure the intrinsic level of the present and suspended rates from the Illinois mines to the Northern Illinois points by the Holmes and Hallowell Scale?

Exam. Trezise: Now, do you want to answer that in the affirmative? If you do, you will be just diametrically opposite to what you told the Examiner.

Mr. Stadell: That is what I want to find out.

The Witness: I don't understand the difference between the two questions. I said that we used the Holmes and Hallowell Scale as a yardstick. When it indicates it is that per cent of the H & H Scale compared with the higher [fol. 712] per cent of the other rates, that in my opinion is evidence that it is not unreasonably high. I am talking about the proposed rates.

Mr. Stadell: Now, coming back to my question, will you answer my question.

The Witness: I don't know that I understand your question, Mr. Stadell. I have answered it as best *as* I can.

Mr. Stadell: You mean you don't understand the question?

Mr. McElroy: Suppose you repeat it for him, Miss Reporter.

(Question read.)

The Witness: That was the Examiner's question?

Mr. Stadell: That was my question. In other words, without reference to your present rates from Illinois and Indiana to your comparative interstate points, just forgetting all about those for the time being, are you or the railroads in the exhibits that they have presented in these proceedings using the Holmes and Hallowell Scale as a yardstick to measure the intrinsic level or lawfulness of the present and suspended rates from the Illinois groups to the Illinois points involved?

The Witness: We are using it as a yardstick to measure the level of the rates. I have answered you before. We also used it as a yardstick to measure the level of the comparative rates.

Mr. Stadell: You are using it for both purposes then?

The Witness: I don't understand your question.

[fol. 713] Exam. Trezise: Well, Mr. Stadell, my question maybe will help you.

Mr. Nelson, is it your intention to compare a reasonable rate with the relation it bears to the Holmes and Hallowell Scale, or do you merely intend to use the Holmes and Hallowell Scale as a basic yardstick to compare two different sets of rates? You answered that, that the latter is true.

The Witness: That is right.

Mr. Stadell: Well, now, the latter is true——

The Witness: We used it as a yardstick to compare the two sets of rates.

By Mr. Stadell:

Q. And we are to attach no significance to the fact that your exhibits show that the present rates, or the suspended rates from the Illinois groups to Rockford or the other Illinois points happen to be 65 per cent instead of 75 per cent or 85 per cent of the Holmes and Hallowell Scale? That leaves out of consideration your representative comparative points.

A. It certainly would show they are not unreasonably high. It shows the level of the rates.

Q. It just shows they are a certain percentage of the Holmes and Hallowell Scale, is that right?

A. Yes.

Q. Are we to attach any significance to that fact standing alone and as indicating the rates are unreasonably low or unlawful in any other respect?

[fol. 714] A. It shows they are low.

Q. As measured by what, merely the percentage of the Holmes and Hallowell Scale?

A. Measured by the other rates to representative comparative points and using the H & H Scale.

Q. Well, now, your answer then is contrary to what you just stated to the Examiner, is that right?

A. I don't understand that it is.

Q. Do you still stick by your answer to the Examiner?

A. I understood my answer to the Examiner, he wanted to know if we were using the H & H Scale as a yardstick and I told him, yes, that is what we have done.

Q. But you told him you were using it only as a yardstick to compare the present and suspended rates from Illinois and Indiana to Northern Illinois with the present rates from those groups to the representative comparative points in Wisconsin and Eastern Iowa. Isn't that what you told the Examiner?

A. The H & H Scale has been used as a yardstick in this territory for many years.

Q. Will you answer the question. Is that what you told the Examiner?

A. I told him it was used as a yardstick, and I tell you it is used as a yardstick.

Q. Merely to measure the level of the present and suspended rates from Illinois and Indiana to the Northern [fol. 715] Illinois territory as compared with the level of the present rates from Illinois and Indiana to the representative territory, that is, representative comparative territory beyond, that is the only purpose you used it for, isn't it, or that you intend to use it for?

A. We have used it to show the level of the rates, yes, used it as a yardstick to show the level of the rates.

Q. To the suspended territory and the compared territory?

A. Yes.

Q. And that is the only purpose you had in mind in making these comparisons, is that right?

A. Well, that is the part of your question that I don't understand.

Mr. Stadell: All right, that is all.

Exam. Trezise: Well, I don't want to make it confusing and you don't need to answer this unless you want to. The per cent of the Holmes and Hallowell Scale as you show in your exhibit is not in itself sufficient to show that the rate is unreasonably low, but it does show that in comparison with the per cent of the Holmes and Hallowell Scale as shown by the compared rate, the two percentages taken together are sufficient to show that the compared rate is relatively low, and not the Holmes and Hallowell Scale itself, but the compared percentages of the Holmes and Hallowell Scale?

The Witness: The percentages of the Holmes and Hal- [fols. 716-722] lowell Scale as reflected in this exhibit, the proposed rates to the suspended points, indicates that they are not unreasonably high and that they are lower in level than the level of the present rates to the representative comparative points.

. . . . . .

[fol. 723] By Mr Morgan:

Q. Who directed you to prepare this exhibit, Mr. Nelson?

A. Exhibit No. 11?

Q. Yes.

Mr. Biaett: I don't know that that is relevant, Mr. Examiner, who directed him to prepare it or whether he prepared it of his own motion. What difference does it make?

Mr. Vesey: Would you say it was prepared at the direction of some unknown person whose name you don't care to give?

Mr. Biaett: No, but it doesn't make any difference.

Exam. Trezise: All right, we will let him answer the question.

The Witness: The Exhibit No. 11 is really a recapitulation of the information shown in Robertson's Exhibits 3 [fol. 724] and 4 and was submitted in the record to show a composite or a picture of the information that was contained in these two other exhibits, so that it would be easier to make a comparison. I don't know that it makes any particular difference who made the exhibit. I had it made myself.

By Mr. Morgan:

Q. Well, will you answer the question. Who requested you to prepare this exhibit?

A. No one requested me to.

Q. This was done at your own volition?

A. Yes, sir.

Q. You had an inspiration that you wanted to prepare an exhibit and you prepared it and no one knew you were working on it, is that correct?

A. Oh, no.

Mr. Biaett: I object to that line of examination, Mr. Examiner.

Exam. Trezise: Well, he can tell whether any one knew he was working on it.

The Witness: Of course, they knew.

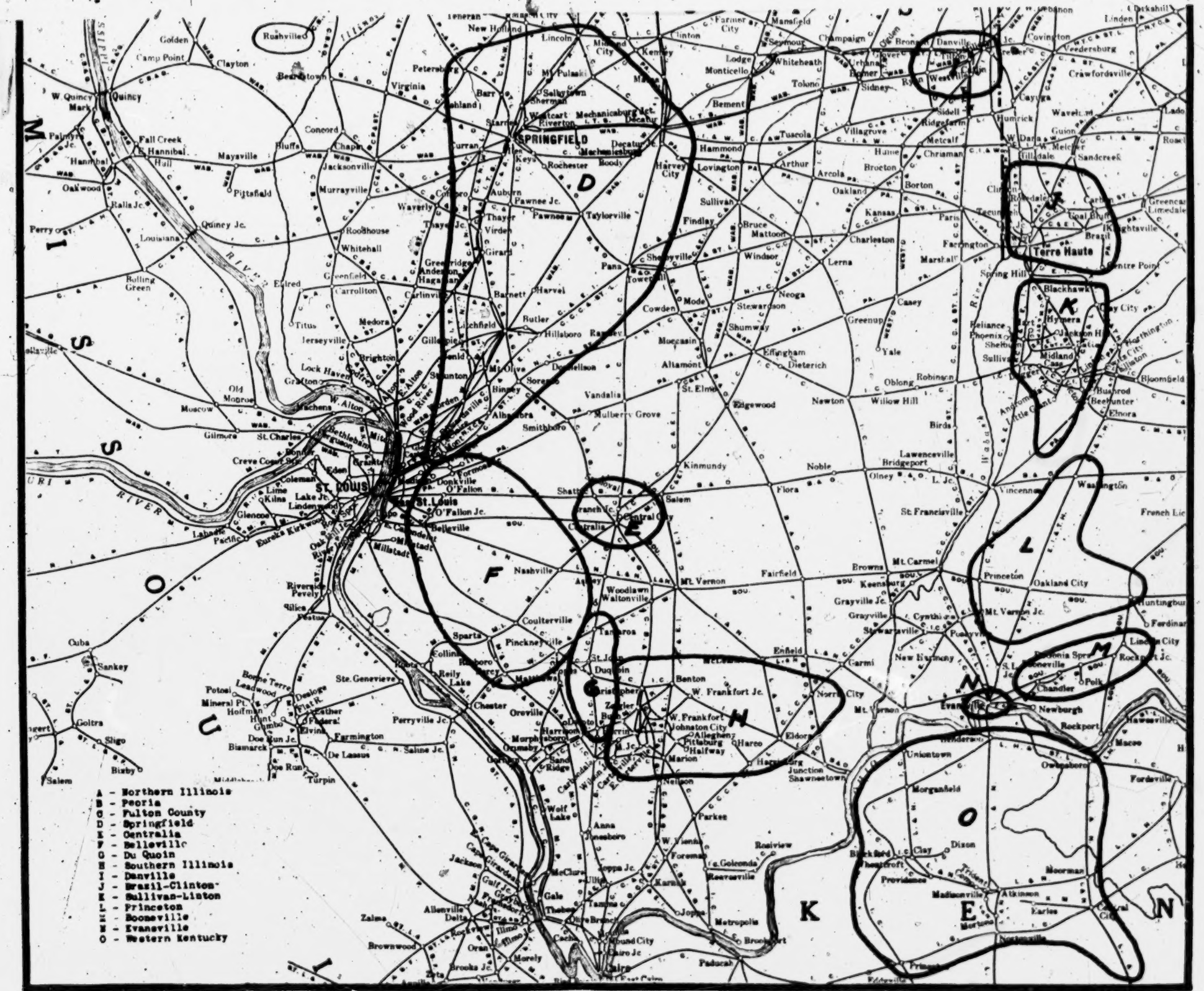
Exam. Trezise: If you want to ask him who knew it, go ahead, if we are going to carry our examination that far.

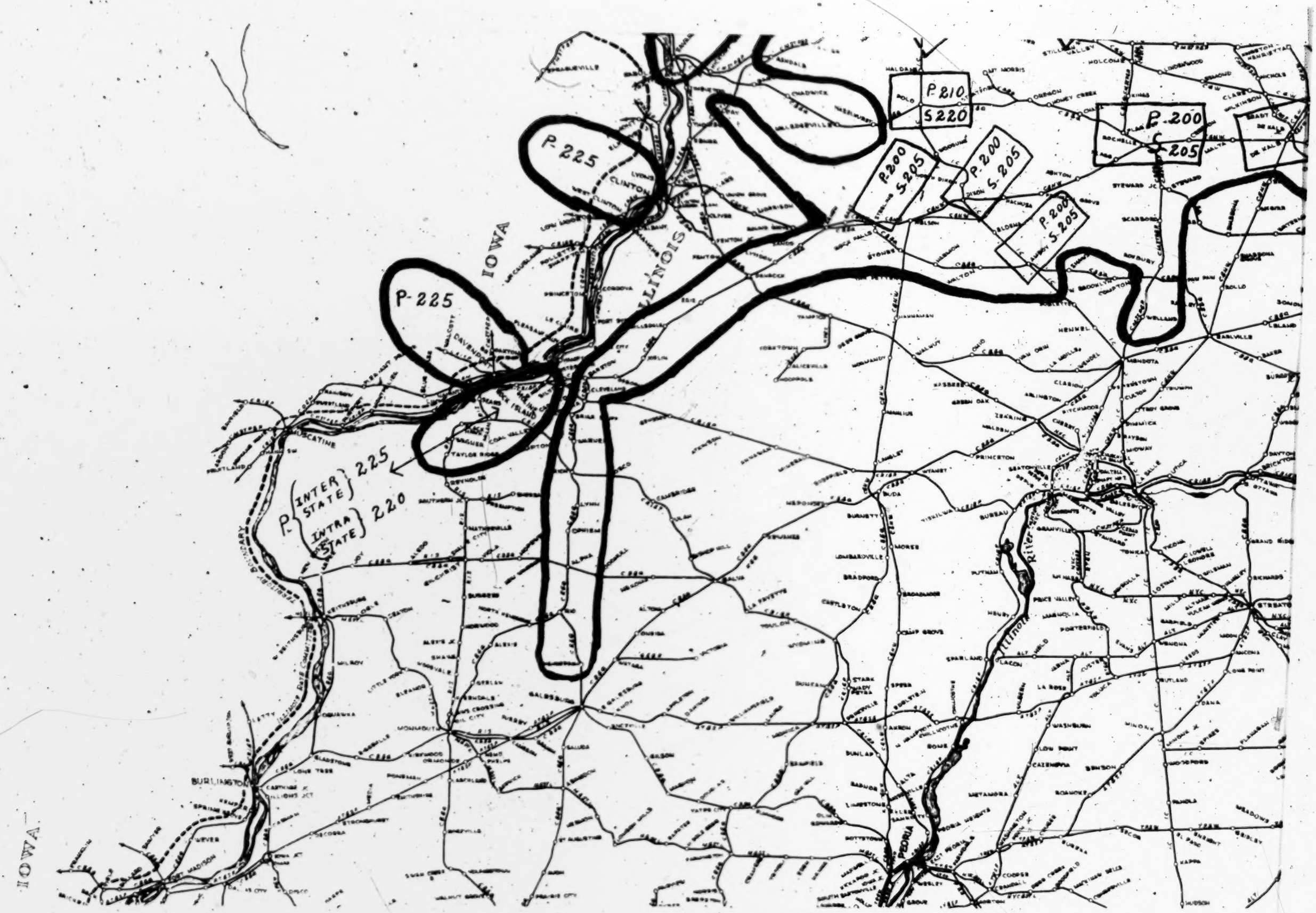
By Mr. Morgan:

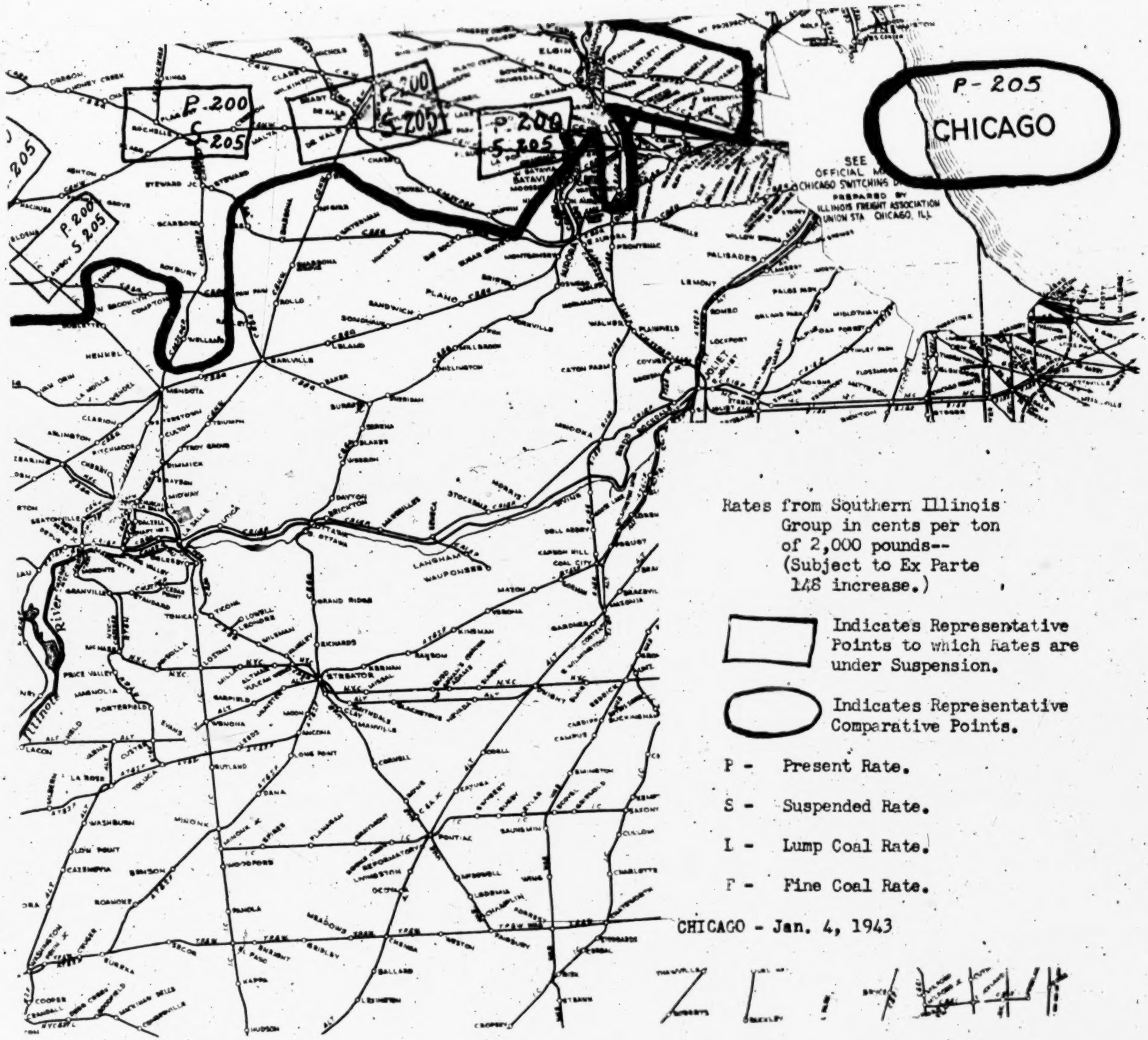
Q. As I understand your prior answer, no one asked you to prepare this exhibit?

A. That is right, but others knew that I did prepare it and had it prepared.

[fol. 725] Q. They knew it after you had it prepared?


A - Northern Illinois
B - Peoria
C - Fulton County
D - Springfield
E - Centralia
F - Belleville
G - Du Quoin
H - Southern Illinois
I - Danville
J - Brazil-Clinton
K - Sullivan-Linton
L - Princeton
M - Boonesville
N - Evansville
O - Western Kentucky
SPRINGFIELD
ST. LOUIS
Terre Haute
Mississippi River
Illinois River
Missouri River


P-225
P-225
P-210
S220
P-200
S-205
P-200
S-205
P-200
S-205
P-200
S-205
P-225
P-{INTER STATE} 225
{INTRA STATE} 220
IOWA
ILLINOIS
CLINTON
MUSCATINE
BURLINGTON
GALESBURG
MONMOUTH
PEORIA
MENDOTA
STREATOR
Illinois River
IOWA



Rates from Southern Illinois Group in cents per ton of 2,000 pounds-- (Subject to Ex Parte 148 increase.)

Indicates Representative Points to which Rates are under Suspension.

Indicates Representative Comparative Points.

P - Present Rate.

S - Suspended Rate.

L - Lump Coal Rate.

F - Fine Coal Rate.

CHICAGO - Jan. 4, 1943

649b - 673

A. No, they knew it at the time it was being prepared, and afterwards, too.

Q. One further question. You stated that the rates presently in effect in Northern Illinois were unreasonable, in your judgment, and you further stated in reply to a series of questions by a series of people that you used the H & H Scales as a yardstick. Did you by using that scale in this exhibit and your other exhibits intend to use that yardstick for the purpose of indicating that the present rates now in effect in Illinois to the affected points is an unreasonable rate?

Mr. Biaett: In the first place, I don't think he has used that scale or tested the present rates to the suspended points.

The Witness: The comparison is with the suspended rates —or the proposed rates to the suspended points with the present rates to the compared points.

By Mr. Morgan:

Q. Whatever rates are compared, did you intend to imply by that yardstick that the present rates are unreasonable rates?

A. I am showing by this comparison that the present rates are depressed rates and that the proposed rates are not higher than reasonable rates.

Q. That is the proposed rates into Illinois points?

A. Yes.

Q. And then the present existing rates are depressed [fols. 726-755] rates, is that the purpose then for which you have used the comparison against the H & H Scale?

A. That is the purpose of the comparison. That is what it shows.

Q. And that is the reason you have used it and the yardstick to indicate that the present rates are unreasonable rates?

A. That the proposed rates are not unreasonable rates, not too high.

[fol. 756] (Witness excused.)

W. H. KUHLS, was sworn and testified as follows:

Direct examination.

By Mr. Hunter:

Q. Will you state your name, occupation and business address, please.

A. W. H. Kuhls, Coal Traffic Manager, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, 788 Union Station, Chicago.

[fol. 757] Q. The Chicago, Milwaukee, St. Paul and Pacific Railroad Company is in the process of reorganization under Section 77 of the Bankruptcy Act, and Henry A. Scandrett, Walter J. Cummings, and George I. Haight are Trustees, is that correct?

A. That is right.

Q. What are your duties as coal traffic manager, Mr. Kuhls?

A. I have charge of all matters relating to coal and coke traffic, freight rates, tariff rules and charges, divisions, claims, commerce, solicitation, and other matters.

Q. How long have you had that position?

A. November 15, 1936. Prior to that time I was chief clerk and clerk in the coal department of the Milwaukee Railroad back to 1924, and about ten years prior to that I was employed in the coal traffic department of the Chicago Burlington & Quincy Railroad.

Q. Have you had any experience in operating matters or cost studies?

A. No, no actual experience. I have heard a lot of testimony on those subjects, but I never made any studies myself.

Q. What will be the nature of your testimony here in this proceeding?

A. Purely rates and traffic.

Exam. Trezise: When you say traffic, what do you mean by traffic?

A. Well, the movements of coal and the loadings per [fol. 758] car and the tonnage.

Exam. Trezise: You didn't mean transportation conditions?

A. No, sir.

Mr. Hunter: That is what we wanted to clarify. Mr. Kuhls is not submitted as an expert in cost accounting or operating matters, but merely as a coal traffic manager.

By Mr. Hunter:

Q. Mr. Kuhls, will you state whether you are testifying here on behalf of the railroad carriers generally and the Chicago, Milwaukee, St. Paul and Pacific Company Trustees specifically?

A. Yes, I am, for the Milwaukee Railroad and respondents generally.

Q. Do the Milwaukee Railroad Trustees serve any of the origin groups involved in this proceeding?

A. Yes, the Brazil-Clinton and the Linton-Sullivan Groups in Indiana.

Q. Do they serve any of the Illinois groups?

A. Not at this time, no.

Q. Do they serve the destination territory?

A. Yes, they serve the destination territory.

Q. Their single haul operates from the Brazil-Clinton and the Linton-Sullivan fields in Indiana to Rockford and certain other destinations in Northern Illinois and Southern Wisconsin?

A. Yes, on the Milwaukee Railroad.

Exam. Trezise: You didn't include the Princeton?

[fol. 759] The Witness: No, sir.

Mr. Hunter: No, the Milwaukee doesn't serve any of the Southern Indiana fields.

The Witness: That is right.

By Mr. Hunter:

Q. Are you familiar with the issues in this proceeding?

A. Yes, sir, I am.

Q. And have you prepared or had prepared under your supervision and direction certain exhibits bearing on the testimony you will present?

A. I have.

Q. Is the information contained in these exhibits true and correct to the best of your knowledge and belief?

A. They are.

Q. Now, will you identify these exhibits which I think have been distributed to everybody in the room.

A. I think so.

Mr. Hunter: The first exhibit I think will be No. 12.

Exam. Trezise: That is correct.

The Witness: That is the 23-page exhibit.

(Respondents' Exhibit No. 12, Witness Kuhls, marked for identification.)

Mr. Cardy: Mr. Hunter, I would request that three additional copies of this exhibit be submitted to the Illinois Commission for use in Docket #1295, which is the Dixon case. [fol. 760] Under the practice before the Commission they have to have three copies in each case if these are heard on a separate or consolidated record, and in order to have a complete record in the Dixon case, I think it is the practice that we should have three copies.

Mr. Hunter: Yes, we will have the reporter mark the exhibits properly for the Illinois proceeding and also for the Interstate Commerce Commission.

Mr. Biaett: The exhibits are not submitted in the Dixon case.

Mr. Hunter: The Milwaukee Railroad is not a part of the Dixon case.

By Mr. Hunter:

Q. Have you identified Exhibit 12?

A. Exhibit 12 contains 23 pages and a title page. Exhibit 13 is one sheet.

(Respondents' Exhibit No. 13, Witness Kuhls, marked for identification.)

Mr. Stadell: The one sheet showing the scales is No. 13?

The Witness: Yes.

Mr. Hunter: Entitled, "Statement showing various scales including Ex Parte 115 increase, but not including Ex Parte 148 increase which have been prescribed by the Interstate Commerce Commission."

The Witness: The two-page exhibit is No. 14.

(Respondents' Exhibit No. 14, Witness Kuhls, marked for identification.)

[fol. 761] By Mr. Hunter:

Q. Will you proceed, Mr. Kuhls, with your explanation of Exhibit No. 12.

A. Exhibit No. 12 consists of 23 pages and an index of contents on the title page. Sheet 1 is a map of all of Iowa, parts of Illinois, Wisconsin, and other adjacent states. As to Iowa, it shows the differential groupings established in the so-called Midland Electric cases, ICC Docket 26558,

232 ICC 5. The figures 70, 50, and 60 are the differentials prescribed by the Interstate Commerce Commission for Southern Illinois over Fulton County to Northern, Eastern sections of the state, Central, Western and Southern respectively. On the subsequent page are shown prescribed differentials between other Illinois groups.

The figures through encircled points in Illinois, Wisconsin and Minnesota are the differences in the suspended or present rates, Fulton-Peoria versus Southern Illinois.

Sheet 2 is taken from Appendix C of the Midland Electric decision in 232 ICC 5, and shows the differentials prescribed by the Commission between the several Illinois groups together with distance differences and the then existing differentials.

Sheets 1 and 2 are introduced in evidence to supply the latest prescription by the Interstate Commerce Commission of rate levels and differentials in this territory and will be referred to throughout my testimony.

[fol. 762] Sheets 3 to 7, inclusive, show maximum reasonable rates on coal prescribed in 232 ICC 3 from Fulton County and Southern Illinois to representative destinations in Iowa; and average distance via short tariff routes; differences in rates and distances, Fulton County under Southern Illinois; the Holmes and Hallowell Scale rates, with percentages; the 26558 scale rates, with percentages; average distances via shortest tariff routes are also shown.

The Holmes and Hallowell Scale was prescribed by the Commission for use in establishing the rates from Lake Superior docks to destinations in Minnesota, North and South Dakota. The purpose of these data is to show the level of rates from the nearest and farthest Illinois origin groups to Iowa, which groups are the largest producing districts in the state of Illinois, and the differential relationship between them.

The present rates from Fulton County range from 86.6 per cent to 100.5 per cent of the Holmes and Hallowell Scale, and from 95.1 per cent to 103.2 per cent of the 26558 scale.

Exam. Trezise: What is this H & H Scale that you say it is related to? Is that the original scale or the scale as increased by some certain amount?

The Witness: That is the maximum scale appearing in 69 ICC 11, with the Ex Parte 15 increase added to it.

Exam. Trezise: What was that Ex Parte 115 increase, as you understand it, that was added?

[fol. 763] The Witness: Three, five, ten, and fifteen cents, depending upon the measure of the rate. The present rates from Southern Illinois are from 70.4 per cent to 83.6 per cent of the H & H Scale, and from 76.1 per cent to 94.1 per cent of the 26558 scale.

Pages 8 to 10, inclusive, show present and suspended rates on Bituminous coal from Fulton County and Southern Illinois groups to representative suspended destinations in Illinois and present rates to comparative destinations in Illinois, Iowa, and Wisconsin, with average distances via short tariff routes, differences in rates and distances Fulton County under Southern Illinois, the H & H Scale, 26558 and 23922 scale rates, together with percentages present and suspended rates are of the scale rates.

By Mr. Hunter:

Q. Mr. Kuhls, will you explain what the 23922 scale is?

A. The 22922 scale was prescribed in Docket No. 23922 for the establishment of rates from Indiana to destinations in Central-Eastern Illinois, reported in 190 ICC 743.

Q. Have you any comment with respect to sheet 9?

A. I am talking now to page 8 to 10, inclusive. The suspended rates on page 9, when measured by the scales shown, are generally lower than the present rates to comparative points on page 10. Fulton County and Southern Illinois are again used for reasons stated in connection with pages 3 to 7.

[fol. 764] A simple average of the percentages shown in Column I, sheet 9, is 76.9 Fulton County and 62.9 per cent Southern Illinois of the H & H Scale. To Iowa, as pointed out, Fulton County ranges from 86.6 to 100.5 per cent and Southern Illinois ranges from 70.4 to 83.6 per cent. Therefore, the average of the Fulton County rates to the suspended destinations is 23.6 per cent less than the rates to Iowa when measured by the Holmes and Hallowell Scale, and the suspended rates from Southern Illinois are 20.7 per cent lower than the rates prescribed to Iowa when measured by the H & H Scale.

Mr. Vesey: Did you say more or lower?

The Witness: Lower. Column L shows the per cent the suspended rates are of Docket 26558 scale, and a simple average of those percentages from Fulton County is 80.9 per cent as compared to 95.1 per cent to 103.2 per cent pre-

scribed by the Commission to Iowa. The average of the suspended rates in Column I from Southern Illinois is 68.8 per cent as compared with 76.1 to 94.1 per cent of the rates prescribed to Iowa destinations. Therefore, the Fulton County rates suspended in this proceeding are 22.2 per cent lower than the rates prescribed to Iowa, and the suspended rates from Southern Illinois are 25.3 per cent lower than the rates prescribed to Iowa.

Mr. Stadell: You say they are that per cent lower. You mean that they are that number of percentage points lower as measured by the scale?

[fol. 765] The Witness: Measured by the particular scale.

Mr. Stadell: But they are not that particular percentage lower?

Mr. Hunter: In other words, that is the difference.

Mr. Stadell: That is the difference as measured by the scale?

Mr. Hunter: That is right.

Mr. Stadell: In percentage points.

Exam. Trezise: And when you contrast these rates with the rates to Iowa, of course, you are using the same method of distances, that is, the short tariff route?

The Witness: That is right. The rates prescribed by the Commission applied via the shortest tariff routes, but the decision also showed the average distance via the short tariff routes. So we are comparing like with like. We are using the short tariff to Iowa and the short tariff to the suspended destinations.

Column O shows the percentage relationship of the suspended rates from Fulton County and Southern Illinois to the 23922 scale, Fulton County being on an average 90.8 per cent and Southern Illinois being 84.4 per cent.

Sheet 10 shows the present rates on Bituminous coal from Fulton County and Southern Illinois to certain destinations in Wisconsin and Iowa, also Chicago, Illinois, with average distance via short tariff routes, the difference or [fol. 766] differentials between Fulton County and Southern Illinois, the H & H Scale rates with percentages in that scale, 26558 scale rates with percentages, and the 23922 scale with percentages.

A simple average of the present rates from Fulton County to the comparative destinations is 82.1 per cent as compared to 76.9 per cent to the suspended destinations. The average of the present rates from Southern Illinois is

87.5 per cent of the H & H Scale as compared to 62.9 per cent to the suspended destinations. The present rates from Fulton County when measured by the 26558 scale shown under Column H averages 87.3 per cent as compared to 80.9 per cent to the suspended destinations. The present rates from Southern Illinois to the comparative destinations is 78.8 per cent of the 26558 scale as compared to 68.8 per cent to the suspended destinations, or exactly 10 per cent higher to the comparative destinations and to the suspended destinations.

By Mr. Hays:

Q. Mr. Exhibit, before you leave page 10, will you summarize very briefly what you have shown in these preceding pages? In other words, no matter what scale you use as a purpose of comparison, what result do you reach?

A. The result is the same, whether you use H & H, 26558 or 23922. They all show that the suspended rates to Illinois destinations are lower, substantially lower than the present rates to the comparative destinations.

[fol. 767] In Column J are shown the per cents the present rates are of the 23922 scale. The average from Fulton County is 96.9 as compared to 90.8 to the suspended destinations; and Southern Illinois averages 90.5 per cent to comparative points, as contrasted to 84.4 per cent to the suspended destinations. Here the difference in the levels is 6.1 per cent, using the 23922 as a measuring stick.

Sheet No. 11 shows the proposed or suspended rates from the Springfield, Illinois and the Brazil-Clinton, Indiana groups to the representative suspended destinations in Northern Illinois, with the average mileage via short tariff routes from these groups, and the average distances and rates from the Brazil-Clinton group under or over Springfield. The authority for the mileages shown on this sheet is Exhibit No. 3. But since it was prepared certain corrections have been made in Robertson's Exhibit No. 3-A, and I would like to ask your indulgence in making a few corrections on sheet 11 to bring it in conformity with Exhibit 3-A.

Q. The first corrections, I take it, are under the heading of mileage under Column C?

A. Yes, they are all mileage. Under Column C, line 11, in place of 254.9 it should read 244.2. Still under Column

C, line 25, instead of 232.4 as an average it should be 231.5. In Column F, line 20, Rochelle, where 261 is shown, substitute 251.3. Line 25, the average is shown as 254.7; it should be 255.9.

[fol. 768] Now, the only change that is required as the result of these two corrections is on line 25, column H. The mileage difference Brazil-Clinton over Springfield instead of being 22.3 is 24.4.

It will be noted in columns E, F, G, I have shown more than one rate and more than one mileage for certain of the destinations. In explanation thereof I will say that where a single rate is not applicable from all mines in the origin group, the average group distance is not used, but in its stead the average for the individual rates. For example, line 3, Byron, I show no rate in column E, but I show 252.8 in column F as being the average from the group. Then on line 4, a rate of $1.90 is shown in column E which applies for an average distance of 234.4 miles, that being as explained in column G the average of mines on the C.M.St.P.&P., and likewise, the averages for other rates, were it not uniform, are shown.

For a good many years past Brazil-Clinton and Springfield, Illinois groups have generally had a parity of rates to this destination territory. This was broken up by action of the Illinois Commerce Commission.

Q. Mr. Kuhls, before you get to that, did Brazil-Clinton ever have lower rates than Springfield?

A. Yes. For example, turning to Exhibit No. 4, page 8 of section 1, it is shown that on January 1, 1910, the rate from Springfield to Rockford, Illinois was 95.3 cents; from [fol. 769] Brazil-Clinton, Indiana 90 cents. On December 1, 1910 Springfield was increased to 105.3, Brazil-Clinton increased to $1.00, and so on. It wasn't until April 1st, 1913 that Springfield was placed on the Brazil-Clinton basis.

Q. And that relationship existed from 1913 until when?

A. Until the parity was disrupted by order of the Illinois Commerce Commission dated March 7, 1928, by Dockets 13568 and 13569. Speaking particularly to Rockford, the Milwaukee Railroad subsequent to the reduction in rates by the Illinois Commerce Commission restored the relationship of its Brazil-Clinton mines with Springfield, following a decision of the United States Supreme Court in

294 United States 499. In that case the court pointed out——

Mr. Stadell: Now, I object to what the court pointed out. The court's decision will speak for itself.

Mr. Hunter: That is correct.

By Mr. Hunter:

Q. Now, will you state, Mr. Kuhls, whether the Milwaukee Railroad takes the position that the rates shall be the same from the Brazil-Clinton field as from the Springfield, Illinois Group?

Mr. Stadell: To where?

Mr. Hunter: To the destinations involved in this proceeding.

The Witness: I think sheet No. 11 proves that conclusively. There are some spots in this adjustment which [fol. 770] are unfavorable to Brazil-Clinton as against Springfield. For instance, line 2, Belvidere, the Brazil-Clinton mileage is 18.8 miles less than the average from the Springfield, but our rate is 17 cents a ton higher. Line 18, Geneva, Brazil-Clinton mileage is 15.4 miles less than Springfield, but the Brazil-Clinton rate is 14 cents higher.

Now, we are not contending that each of these destinations should be picked out and the rates and distances gone over with a fine tooth comb. We are willing to support this general proposition of the railroads to all these destinations even though it is unfavorable in some respects to us.

Now, the average of the Brazil-Clinton mileage, line 25, is 24.4 miles greater than from Springfield, and the Brazil-Clinton rates average 13.4 cents per ton higher than Springfield.

If you will refer to page 2, you will find that to destinations in Iowa the Commission prescribed a differential of 10 cents DuQuoin under Southern Illinois for a distance of 32 miles.

On line 11 of sheet 2 it is shown that the Commission prescribed a difference of 15 cents Belleville under Southern Illinois for 51 miles.

There are a number of others. It won't be necessary to read them all into the record. They indicate that this average rate of Brazil-Clinton over Springfield is too high con- [fol. 771] sidering the difference in the distance is only 24.4 miles.

Exam. Trézise: Well, is there anything the matter with these differentials in Indiana? Is that what you are driving at, there may be something the matter with those differentials between the groups?

The Witness: No, your Honor, I am not driving at it, but I am afraid our friends will drive at it.

Exam. Trezise: You are just fortifying yourself against what you think might come?

The Witness: That is correct.

Exam. Trezise: To show that they are right or to show that they are wrong, which?

The Witness: To show they are right as a general proposition.

Exam. Trezise: As they are?

The Witness: As we propose them.

Exam. Trezise: And that they compare reasonably with the type of differentials that the Commission fixed to Iowa? You wouldn't say that, would you?

The Witness: No. The Brazil-Clinton rates could be a little lower than they are from Springfield, but we are not asking that at this hearing.

Exam. Trezise: I meant the rate itself, not the differential.

The Witness: Well, of course, the differential would be [fol. 772] reflected in the measure of the rates.

Exam. Trezise: All right.

By Mr. Hunter:

Q. Mr. Kuhls, however, the Milwaukee railroad trustees contend, as I understand it, that the rate prescribed by the Commission from the Brazil-Clinton Field should be no higher than the rate prescribed from the Springfield group, is that right?

A. That is right, and we feel it couldn't be any different on the record. The average distance, for example, from Springfield to Rockford is 260.7 miles. Now, the Milwaukee average, that is, mines on the Milwaukee, is 237.1 miles, or 23.6 miles less. Now, surely a higher rate couldn't be justified.

Q. Did you mention the average of the mileage from all of the mines in the Brazil-Clinton?

A. Even taking the average of all the mines, 254.3, it is 6.4 miles less than the average from Springfield.

Exam. Trezise: Well, would you stop when you get this proper relationship as you indicate there might be reached when you compare the Springfield Group with the Brazil-Clinton Group? How about the other groups?

The Witness: Well, I go into that on sheet 12.

Exam. Trezise: Well, I was just hoping that you were going to say something the same about those too. So we will wait with anticipation.

The Witness: All right. Sheet 12 shows the rate and [fol. 773] mileage differentials between Brazil-Clinton and Linton-Sullivan, Indiana groups, to the representative suspended destination. It will be noted that the differential in the last column varies. In some cases it is 10, in other cases it is 5, and in some cases both 5 and 10. That is the result of the origin lines carrying different rates, as in the case of Byron, Forreston, Freeport and Rockford. The differential between mines on the Milwaukee railroad and the Brazil-Clinton Group and Linton-Sullivan Group is 10 cents, and we feel that either 5 or 10 could be justified by relying on the differenfials prescribed in the Midland case as shown on sheet 2. Either one is satisfactory, but so far as our line is concerned, why, 10 cents is——

By Mr. Hunter:

Q. Mr. Kuhls, while we are on that point, the Milwaukee railroad serves mines both in the Brazil-Clinton and Linton-Sullivan Groups, is that correct?

A. That is right.

Q. Can you tell us the percentage of the total coal traffic handled by the Milwaukee railroad trustees from these groups as compared with the total to the destination territory involved in this proceeding?

A. Well, there is no record kept of these destinations, with the exception of Rockford. In 1942 the Brazil-Clinton and Linton-Sullivan Groups shipped—well, take the groups separately—the Brazil-Clinton Group shipped 136,999 tons [fol. 774] to Rockford, of which 132,589 tons originated on the Milwaukee and were carried to Rockford. The tonnage originated and carried by the Milwaukee represented 95.4 per cent of the total from the Brazil-Clinton Group.

Q. What was the percentage about 1933 or thereabouts, do you know?

A. Well, in the Supreme Court case the Court said about 99 per cent. Now, from the Linton-Sullivan Group the total

coal delivered at Rockford which originated in the Linton-Sullivan Field amounted to 44,715 tons. The Milwaukee originated and carried 35,127 tons or 78.5 per cent of the total.

Mr. Wood: May I ask, are these figures in the exhibit anywhere? It is hard to follow the thought.

The Witness: The average distance difference between the Brazil-Clinton and the Linton-Sullivan Groups to the representative suspended destinations is 38.4 miles, and as I stated, a differential of either 5 or 10 cents could be justified by using the sheet 2 as a guide.

For example, on sheet 2, line 2, it is shown that the Commission prescribed for Fulton County under Northern Illinois 5 cents for a distance difference of 30 miles, which would justify the 5 cent differential between the two Indiana groups.

Then on line 13 it is shown that the Commission prescribed a differential of 10 cents DuQuoin under Southern Illinois for a distance difference of 32 miles, which would [fol. 775] justify a 5 cent differential between the two Indiana groups. So either one seems to be proper. Of course, we prefer it 10 cents.

By Mr. Hunter:

Q. Those differentials were prescribed by the Commission in the Midland Electric case, is that right?

A. And in effect today, yes.

Exam. Trezise: Now, you are not going to tell us what you think the relation ought to be between the Linton-Sullivan and Princeton-Ayrshire and Boonville Group. That is beyond your testimony?

The Witness: Yes. We don't serve those groups.

Exam. Trezise: Yes; you are not going to tell us that 3 cents down there ought to be 10 cents.

The Witness: No.

Exam. Trezise: Go ahead.

The Witness: Sheet 13 is a statement showing a number of commodities rated class D and class E in western classification, on which column ratings have been prescribed by the Interstate Commerce Commission. Some are so-called low rated commodities, being fertilizers or fertilizer fillers, and other commodities much more valuable than bituminous coal.

I think it represents kind of a cross section between low rated commodities that sell for about the same prices as coal and commodities that sell for a little higher price than coal. Only two of these commodities have been rated below 15 per cent of first class, and as will be shown later, the [fol. 776] suspended rates from Illinois, Indiana, western Kentucky to Northern Illinois are less than 12 per cent of first class, and a substantial number below 11 per cent.

Mr. Wood: I would like to ask the witness, have all these items from 2 to 31 come out of the Indiana mines on any railroad?

The Witness: Well, line No. 1 does, coke.

By Mr. Hunter:

Q. Mr. Kuhls, what is the purpose of pages 13 and 14, please?

A. Well, 13 shows the level of commodity rates which have been taken out of the classification and given a column rating and it is designed to be used in connection with subsequent sheets which show the level of the suspended rates.

Q. These are merely further comparisons, are they not, pages 13 and 14; you have compared the suspended rates with various coal scales and now you are comparing them with the column ratings on various commodities?

A. Yes. We have shown that the suspended rates are lower than the comparative rates or competitive rates, measured by the H. & H. scale, 23922 and 26558, and then we want to go still further and show there are other measuring sticks demonstrating the suspended rates are low.

Mr. Wilkinson: May I ask you a question, Mr. Kuhls, so I can follow your exhibit. Classification rating D, where you show coke is 16½ per cent, in classification rating D, [fol. 777] does that mean coke moves on a first class scale, or what would be the rate for the coke?

A. With our new through commodity rates on coke, they would be subject to class 3 rates.

Mr. Wilkinson: Is that the same as the first class rates?

By Mr. Hunter:

Q. Column C shows the percentage, does it not, Mr. Kuhls?

A. Classification D is 22½ per cent of first class.

Q. Is that correct? Column D would appear to be 16½ per cent.

A. Mr. Hunter, these are the commodity rates prescribed in 194 I. C. C. 640 for application on coke. If there were no through rates based on 16½ per cent of first class then the coke would move on class D, which is 22½ per cent.

Mr. Hunter: Oh, I see.

The Witness: But the Commission has taken Coke and these other commodities out of the classification and given them commodity rates based on these column ratings.

Mr. Hunter: I see.

Mr. Wilkinson: Now, if Coal didn't have any rates published for it and you were going to ship a car of coal and there was no specific rate on coal, where would it fall?

A. Class D, 22½ per cent.

Mr. Wilkinson: It would be 22½ per cent of first class?

The Witness: Yes.

[fol. 778] Mr. Wilkinson: Then when you come over here, you have got to take 22½ per cent of this first class rate to get the equivalent of this proposed coal rate, don't you, if you are going to compare it with coke?

The Witness: Are you talking now about——

Mr. Wilkinson: I am talking about page 14 of your exhibit now.

The Witness: Let us take the Springfield group to Amboy, line 1.

Mr. Wilkinson: If coke was moving there, it would take 16½ per cent of 22½ per cent of this first class rate?

The Witness: No, it would take a specific commodity rate based on 16½ per cent of first class.

Mr. Wilkinson: I thought it took 16½ per cent of the class D rate.

The Witness: No. You recall I. & S. Docket 3511.

Mr. Wilkinson: I don't know anything but coal rates.

The Witness: The Commission prescribed rates on coke from Ashland, Kentucky and southern Ohio ovens. They prescribed a distance scale which they said equalled 16½ per cent of first class.

Exam. Trezise: Will you just explain on page 14 under first class the 1460.

The Witness: 1460 is cents per ton arrived at by multiplying the hundredweight rate by 20.

[fol. 779] By Mr. Hunter:

Q. For example, the rate from Springfield, Illinois to Amboy, Illinois, would be 73 cents a hundred pounds, the first class rate?

A. That is right.

Q. Now, Mr. Kuhls, Springfield, Illinois, is located where with respect to the Springfield group?

A. Well, at the present time it is practically in the extreme north end of the Springfield group, mines further north being abandoned, as I understand it. The Springfield group extends down to Mt. Olive and Staunton, which are about 30 miles east of St. Louis. So if you took a central point in the Springfield group or took another point in the southern end of the Springfield group your first class rate would be much higher and your proposed coal rate accordingly much lower than 12 per cent of first class.

Q. For example, when you go over to the Clinton group, to Amboy you have a first class rate, from Terre Haute to Amboy, of 86 cents, making the first class ton rate $17.20, is that correct?

A. That is right.

Q. And where is Terre Haute in the Clinton group?

A. Terre Haute is the last point, the most southerly point in the Brazil-Clinton group, the furthest distant point.

Q. Now, with respect to the Clinton group, you took a group farther away from Amboy, that is, a more distant [fol. 780] point in the group, and with respect to the Springfield group you took the nearest point to Amboy?

A. It is not the purpose of sheet 14 to demonstrate the relationship between origin groups. It is for the purpose of showing the level when measured by the class rates of the entire suspended adjustment. No, it wouldn't be fair to base the Springfield group on the Springfield class rates and the Brazil-Clinton rates, on the Terre Haute class rates.

Q. No; the purpose is merely to give an idea of the measure of the rates based on class rates?

A. That is right. Page 15 shows the same information as contained on page 14 to the representative compared destinations. The showing here is opposite——

Q. Mr. Kuhls, will you pardon an interruption. In order to clarify the matter for someone, I noticed a notation at the bottom, coal rates, same as Exhibit No. blank. Should there be some insertion?

A. No 4 should be inserted there.

Q. Was the same to be placed on page 14? You have a notation on the bottom there, coal rates, the same as Exhibit No. 4?

A. That is right.

Q. In other words, insert Exhibit No. 4 in the blank space on pages 14 and 15.

A. Yes. I am sorry I slipped up on numbering those in time. Then on page 8 you will find that I omitted the [fol. 781] authority there too. The authority for the distances, this is on page 8, is taken from Exhibit No. 3.

Q. That is in the top line?

A. Yes, And the authority for the rates is taken from Exhibit No. 4.

The showing on sheet 15 as to the representative comparative destinations is quite opposite to the showing as to the suspended rates, in that the present rates, to comparative points are generally higher than 12 per cent, if Chicago is omitted.

Mr. Bather: Mr. Kuhls, in order that I may understand this, how did you arrive at your first class rates shown on pages 14 and 15? I think you said you took 20, multiplied it by 20?

The Witness: I took the class rate per hundredweight and multiplied it by 20 to get the class rate on a ton.

Mr. Bather: Oh, I get your point. In other words, you took the rate per hundredweight and multiplied it by 20 to get your rate per ton.

The Witness: Sheet 16 is a similar showing for rates from the Inner Crescent, using Ferndale, West Virginia, as representatives.

By Mr. Hunter:

Q. Mr. Kuhls, just go back to sheet 15. You said that the rates, are generally higher to the comparative points than to the suspended points. Have you figures, have you counted [fol. 782] the number of points?

A. Well, I said if Chicago was omitted. I would have to deduct Chicago here. Out of a total of 152, 77 are lower than 12 per cent.

Mr. Vesey: That is based on page 14?

The Witness: Page 15.

Mr. Stadell: Where is that from and to, Mr. Kuhls?

The Witness: All the rates shown on page 15.

Mr. Stadell: From all the groups to all of the points there?

The Witness: Take all of the percentages there, as I count them, there are 152 percentages shown on sheet 15, and omitting Chicago there are 57—I said 77—I should have said only 57 are lower than 12 per cent.

Mr. Stadell: To the comparative points?

The Witness: Yes, sir.

Mr. Vesey: Did you give us the same figure on the suspended points?

The Witness: I said with few exceptions. On the suspended points, with few exceptions, the rates are lower than 12 per cent.

Mr. Vesey: Would your counsel object if I attempted to clear up what I think is an error on page 14?

Mr. Hunter: I will try to clarify this 15.

By Mr. Hunter:

Q. I think you indicated there were 152 des-inations, [fol. 783] and is it correct that 85 are higher than 12 per cent and 67 are lower than 12 per cent? Is that what you said? I was trying to follow you, but there was quite a bit of talking.

A. Well, it would be the difference. I gave the number lower. It would be the difference, which would be higher. I gave 57 lower, which would leave 95 higher than 12 per cent.

Mr. Bather: 95 what?

The Witness: Percentages.

Mr. Vesey: May I ask a question right there, Mr. Hunter?

Mr. Hunter: Yes.

By Mr. Vesey:

Q. Did you check the figures shown on page 14 of Exhibit 12 to determine if those figures are correct?

A. On sheet 14?

Q. That is right.

A. Well, you mean the rates and percentages that I show here?

Q. That is right.

A. Yes, they are correct.

Q. Did you check them back to ascertain whether they are correct?

A. Yes.

Q. Don't you know, as a matter of fact, taking your Fulton County Group rate, for example, what you have shown as your proposed coal rate is in fact your present coal rate and not the proposed?

A. No, I didn't know that.

[fol. 784] Q. Don't you know that your proposed rate is $1.55, for example, to Amboy, as against $1.50? For example, to Rockford it is $1.50, your present rate, and $1.65 as a proposed rate?

A. This sheet 14 shows the caption, proposed rates.

Q. I know it does, but did you check it back to find out whether these figures are correct or not?

A. Well, I still think that the proposed rate here, take proposed rate Springfield to Rockford, $1.95, well, certainly that is the proposed rate.

Exam. Trezise: The present rate is $1.80, isn't it?

The Witness: Yes. Are you looking at a rate history which includes the Ex Parte 148 increase?

Mr. Vesey: No. I am just looking at this, as I understand your proposed rates to be. Or are these the proposed rates submitted by the Milwaukee Railroad to the carriers as a proper rate from Fulton County, let us say, to the destinations shown?

The Witness: These are presumed to be the suspended rates.

Mr. Hunter: Will you look at Mr. Robertson's exhibit, while we are at it, Mr. Kuhls.

The Witness: I don't have to. I see the rates here.

Mr. McElroy: Can't we go along with the testimony, and if there are any corrections to be made on the exhibit, we can make them later.

Mr. Hunter: Yes, we will check them. All the other groups [fol. 785] are apparently all right.

Exam. Trezise: As far as Rockford is concerned, that is certainly correct there.

Mr. Bather: Is your differential from Fulton County 75 cents under your Southern Illinois group to Rockford today or under the proposal?

The Witness: No, sir.

Mr. Bather: That is what you show on your exhibit.

The Witness: There does seem to be some question about the Fulton County rates.

Mr. Vesey: Well then, so long as that question exists, you can't make a comparison between pages 14 and 15, can you?

The Witness: Not from Fulton County, to the extent the rates are incorrect.

Mr. Hunter: Will you check that, Mr. Kuhls?

The Witness: Yes, I will check that.

Mr. Hunter: And we will explain that in the morning.

Mr. Vesey: Surely.

Exam. Trezise: The Rockford rate from the Fulton-Peoria group proposed is wrong. It says $1.50. Why, the proposed rate is $1.65.

Mr. Vesey: That is why I was wondering, Mr. Examiner, and the reason for the question.

Exam. Trezise: This is wrong on this sheet.

Mr. Vesey: Yes, or unless the Milwaukee has a different [fol. 786] proposal or did make a different proposal to the carriers in the group, in anticipation of new rates, and I wanted to find out which of the three it was.

Exam. Trezise: That must be a clerical error. Mr. Kuhls will look that up and straighten it out, and thank you, Mr. Vesey, for your attention.

Mr. Vesey: I don't think that it is a clerical error. I think it might have some soundness in fact.

Exam. Trezise: We will adjourn to ten o'clock in the morning.

(Witness excused.)

(At 4:45 o'clock P. M. June 15, 1943, adjourned to 10:00 o'clock A. M. June 16, 1943.)

[fol. 787]

Morrison Hotel,
Chicago, Illinois,
June 16, 1943.

The hearing was resumed pursuant to adjournment at 10:00 o'clock a. m.

Before R. N. Trezise, Examiner. F. B. McElroy, Illinois Commerce Commission

APPEARANCES:

As before.

PROCEEDINGS

Exam. Trezise: Whenever you are ready, gentlemen, we will proceed.

Mr. Hunter: Mr. Kuhls.

W. H. KUHLS resumed:

Direct examination (continued).

By Mr. Hunter:

Q. I think, Mr. Kuhls, when we left off last evening you were explaining your Exhibit No. 12.

A. I believe I had gotten through sheet 17, when my attention was then called to apparent errors in the Fulton County group rates on sheet 14. If I may at this time, Mr. Examiner, I would like, for the record, to call off the correct rates, and the percentages of first class represented by the correct rates.

Exam. Trezise: Yes.

The Witness: All of the following corrections will be made in the Fulton County group column, which is the last [fol. 788] column on the sheet. The rates shown are the present rates, with the exception of the rate to Sterling. The correct proposed or suspended rates are as follows: in line 1, $1.55 instead of $1.50; per cent, 11.7. Line 2, Belvidere, $1.65 instead of $1.50; per cent, 10.9.

By Mr. Binkley:

Q. 10.9?

A. Yes, sir. Line 3, Byron, $1.60 instead of $1.64; per cent, 11.0. Line 4, Dekalb, $1.55 instead of $1.50; per cent,

11.1. Line 5, Dixon $1.55 instead of $1.50; per cent, 11.7. Line 6, Forreston, $1.60 instead of $1.50; per cent, 11.4. Line 7, Freeport, $1.65 instead of $1.50; per cent, 11.3. Line 8, Geneva, $1.55 instead of $1.65; per cent, 10.5. Polo, Line 9, $1.60 instead of $1.64; per cent, 11.8. Line 10, Rochelle, $1.55 instead of $1.50; 11.4 per cent; line 11, Rockford, $1.65 instead of $1.50; per cent, 11.1.

Q. 11—what?

A. 11.1. No change in line 12.

I found one error in the Northern Illinois rates. Line 4, DeKalb, the suspended rate is $1.40 instead of $1.55 and the per cent is 13.2 instead of 14.6.

Sheet 18 shows rates on bituminous coal between points in Ohio prescribed by the Interstate Commerce Commission in the 13th Section proceeding, 192 I. C. C. 413. The average distances by short tariff routes are shown, the Holmes and Hallowell Scale for the distances, the rates under Column [fol. 789] A which the Interstate Commerce Commission required to be observed as a minimum, with corresponding percentages of the Holmes and Hallowell Scale; and in Column B, the rates in effect by order of the Ohio Commission and the percentages of those rates. In the last column are shown the tons of coal moved during the year 1931. I would like to direct your attention to the fact that the suspended rates in Southern Illinois to the 12 representative Illinois destinations average 62.9 per cent of the Holmes and Hallowell Scale, which can be compared with the level of the rates prescribed by the Interstate Commission for application within Ohio, as a minimum.

Sheet 20 shows the production of bituminous coal for the United States as a whole and for the states of Illinois and Indiana for the years 1917 to 1941, the percentage the Illinois production is of the total United States production and the per cent the Indiana production is of the country as a whole. Also, in Column G, the per cent the Illinois production is of the Indiana production. Both Illinois and Indiana percentage of the country as a whole was less in 1941 than in 1940, notwithstanding both states had an increase in tons, 1941 over 1940.

The Indiana production varied during these years from just under 4 per cent to a maximum of 5.30 of the United States production, the high figure being in 1918. The purpose of this sheet is to show that the Indiana production is

[fol. 790] small as compared to the country as a whole and is only a small part of the Illinois production.

Sheets 21, 22 and 23 show manufacturing industries located at Freeport and Rockford, Illinois, which are suspended destinations, and other points in Illinois; also Iowa and Wisconsin, which appear in this record as comparative destinations. I have shown the name of the firm; the commodity manufactured and the origin of the coal used, the purpose being to show that industries located at the comparative points compete with industries located at the suspended destinations in the manufacture of the same or comparable commodities. I have omitted coal, lumber and building material dealers, greenhouses, electric and gas utilities and laundries, also manufacturing industries which buy their coal from local dealers, the origin of that coal could not be determined, so the list is not complete. The commodities manufactured by industries at Freeport and Rockford which are also manufactured at the comparative destinations are hardware, batteries, machines, dairy products, boats, plating articles, farm implements, auto parts, knit goods, farm machinery, furniture, farm equipment, leather goods, machinery, forgings, milk products and structural steel. Those are the commodities appearing in the list of the firms on these three sheets, but as stated, all manufacturing industries are not included because of their purchases through local dealers and not direct by carload.

[fol. 791] (Respondents' Exhibit 12, Witness Kuhls, received in evidence.)

The Witness: Exhibit 13 shows three distance scales of rates prescribed by the Interstate Commerce Commission in the cases cited, which have been referred to in these proceedings. The application of the Holmes and Hallowell Scale is well known. The scale prescribed in Docket 23130 and the corresponding Illinois Commerce Commission case, 19591, is the minimum scale which the Commission required to be observed in its order in 182 I. C. C. 537.

The 23922 scale is used in the publication of rates from Indiana to Eastern-Central Illinois, and in its decision the Commission said that its findings were to align these rates with the rates from competing mines, rather than fixing maximum reasonable rates for the services ren-

dered. The scale was made five cents per ton higher than the minimum scale in Illinois, and in my opinion is on a very low basis.

(Respondents' Exhibit 13, Witness Kuhls, received in evidence.)

By Exam. Trezise:

Q. Your Holmes and Hallowell scale you have there is a scale that has been increased in accordance with Ex Parte 115 full increases that you mentioned yesterday, rather than increasing each one of the rates under the Holmes and Hallowell Scale as in 69 I. C. C. 11, seven and a half cents?

A. Yes, and that is the reason it is here used to measure [fol. 792] local rates, whereas the Holmes and Hallowell rates are proportional rates.

Q. There is no application of the Holmes and Hallowell scale on any traffic whatever, on the basis of the scale that you have here, is there?

A. No, sir.

By Mr. Bather:

Q. Mr. Kuhls, in view of the ruling of Examiner McElroy, shouldn't the heading "31295—Dixon Chamber of Commerce versus C. & N. W." be stricken?

A. Yes, it should.

Q. From Exhibit 13 and also Exhibit 14. I should have said Docket, Illinois Commerce Commission's No. 31295.

A. Yes.

Mr. Cardy: Of course, my understanding was, Mr. Examiner, that all testimony in the consolidated cases might properly be received in evidence.

Mr. Bather: That is right, except that Mr. Kuhls is not testifying in the Dixon case.

Mr. Cardy: Well, he is testifying in the I. & S. case before the Illinois Commission, isn't he?

Mr. Bather: That is right, he is.

Mr. Cardy: If you start separating these exhibits and the testimony, we are going to run into difficulty. Either follow the original ruling—of course, necessarily we will have to have the Dixon case set before the Illinois Com- [fol. 793] mission for final completion of testimony, and it

is a question of whether we ought to follow the original ruling and let that go in. I think that would stand anyway, regardless of what the witness would say.

The Witness: Exhibit 14 shows the rates from the original origin points not assigned to any particular group; also rates from Bloomington and Fulton County to the representative suspended destinations in Illinois and compares those suspended rates with the 19591 or 23130 scale, the former being the Illinois Commission number and the latter the Interstate docket number, and the 23922 scale.

Page 2 of Exhibit 14 shows, in the bottom block, a recapitulation of these percentages, and referring to the last column of the lower block, it will be noted that the average from the so-called short origins ranges from 86.3 per cent from Rushville to 110.3 per cent from Atkinson of the 23922 scale, the others being a little less than 90, or in the low 90's.

By Exam. Trezise:

Q. And, Mr. Kuhls, when you say these origin points are not assigned to any group, you mean that these are short-haul rates, are not group origins?

A. That is correct. I think there has been some testimony in an attempt to show that these short-haul rates were high, and this Exhibit 14 appears to answer that contention. They are not high rates as measured by the 23922 scale.

(Respondents' Exhibit 14, Witness Kuhls, received in evidence.)

[fol. 794] By Exam. Trezise:

Q. I supposed it might make it a little clearer if you would tell us if you had calculated the distances in the same manner to make your comparisons.

A. Well, in the 23922 order, the Commission prescribed the formula for figuring the distances. There appeared to be the through rates for distances up to 130 miles and the Commission allowed the carriers to figure the distances via tariff routes, but there not being through rates to points beyond 130 miles from the Indiana groups, we used, as required by the Commission, the shortest route; the shortest available route.

Q. And there were the distances that you figured from Alpha to these destinations in the same manner. I just wanted to make it clear.

A. Yes, sir, take, for instance, Alpha. Where the distance is less than 130 miles, the distances are figured by the same formula; like Alpha to Amboy, 86.8 miles. That is the 23922 formula, but when you get from Rushville, let's see, that is line 6 on sheet 1, 168 miles, that, in this computation, is the short tariff route but in the 23922 scale would be the shortest.

Q. That is the point I wanted to make and thank you. There is not very much variation there?

A. I don't think so; not more than three or four miles.

Q. There would be a slight variation?

A. Yes.

By Mr. Hunter:

Q. Have you any further comment, Mr. Kuhls?

[fol. 795] A. No, that is all I have.

Mr. Hunter: We tender Mr. Kuhls for further examination, both direct, if any, by counsel for the carriers, and then for cross-examination.

Exam. Trezise: Do you have any direct questions?

Mr. Biaett: I have a question or two, Mr. Examiner.

Exam. Trezise: Mr. Biaett.

By Mr. Biaett:

Q. Mr. Kuhls, will you please refer to pages 4 to 7 of your Exhibit No. 12. The rates shown in Column C from Fulton County were prescribed by the Commission in the Midland Electric case, 232 I. C. C. 5, were they not?

A. That is right.

Q. And the rates which you show from Southern Illinois are made by addition of the 50, 60 and 70 cent differentials which the Commission prescribed to different parts of Iowa, are they not?

A. Yes, sir, as shown in Column D.

Q. Now, when you project the ultimate rates from Fulton County and Southern Illinois to the H. & H. Scale, does the exhibit show that Fulton County is a higher percentage of the H. & H. scale or is Southern Illinois a higher percentage of the H. & H. Scale?

A. It shows that Fulton County is the higher percentage of the H. & H. Scale.

Q. That is true throughout the points shown on the exhibit, is it not?

A. I believe so. After checking, I would say that is correct.

[fol. 796] Mr. Biatt: That is all, thank you.

Exam. Trezise: That is emphatically so, isn't it?

Mr. Biaett: Yes, it is.

By Exam. Trezise:

Q. Quite a disparity. You said yes?

A. Yes.

Mr. Biaett: That is all I have, thank you.

Exam. Trezise: Further questions?

Mr. Wilkinson: When the railroads are through, I have a few questions to ask.

Exam. Trezise: All right, cross-examine.

Cross-examination.

By Mr. Wilkinson:

Q. Mr. Kuhls, in your Exhibit 12, on page 11 and page 10—or page 11, rather you show the rates and mileages from the Springfield Group and the Brazil-Clinton Group. Taking Rockford, as an example, in line 21, your rate via the Milwaukee is 17 cents less than the rate via all of the other lines serving the Brazil-Clinton Group, is that not a fact?

A. That is right.

Q. Up to 1933 or 1934, your rate had always been the same as the rates of the other carriers serving the Brazil-Clinton Group, had it not.

A. Yes, and the same to Springfield.

Q. And the same to Springfield?

A. That is right.

[fol. 797] Q. After the 13th Section case, 23130 was decided, and nothing was done by the Interstate Commerce Commission with respect to the rates to Rockford and Freeport, your line, the Milwaukee, reduced its rate from Brazil-Clinton and Linton-Suilivan to Rockford and Freeport, did it not?

Mr. Vesey: If the Examiner please, we can't hear Mr. Wilkinson over here.

Exam. Trezise: Will you read the last question, please?

(Question read.)

The Witness: Yes, we reduced our rates from the two Northern Indiana Groups the same amount as Illinois rates were reduced by order of the Illinois Commerce Commission, 17 cents a ton.

By Mr. Wilkinson:

Q. And that restored the relationship, so far as your road was concerned, to those destinations, Rockford, Freeport and the others involved as between your Indiana mines and the Illinois groups, did it not?

A. That is right.

Q. And was the purpose of that change, Mr. Kuhls, to enable your road to continue to compete for the traffic and the movement of coal from the mines you served in Indiana to those destinations?

A. Yes, that was our contention.

Q. You did not contend in the docket there involved that the rates were unduly high and should be reduced, and [fol. 798] that the then $1.87 rate, or $1.70 rate which you proposed and put into effect, was necessary in order to reduce your rate to a reasonable maximum rate?

A. No, we didn't think our rates were higher than the reasonable maximum.

Q. As a matter of fact, it was the position of the Milwaukee Railroad in that proceeding, was it not, that all of the rates in Illinois and Indiana were too low?

A. Yes, that was the evidence shown in Docket 23130.

Q. But was it your opinion then and is it your opinion now that if you are going to transport coal from the mines served by you in Indiana to the Rockford, Freeport and other destinations that it is necessary for you to have the same relationship with Illinois that you enjoyed prior to the disruption by the Illinois reduction in rates?

A. That is our opinion.

Q. Now, is there anything peculiar in the service of the Milwaukee that makes it necessary for you to have that relationship that does not apply to the other carriers serving the Brazil-Clinton and Linton-Sullivan Groups in Indiana?

A. Well in our court case we showed that we were a single-line railroad from the origins to the destinations and that our mines were located at a lesser distance than the mines on the other railroads.

Q. Yes, but leaving aside that factor, and I am thinking [fol. 799] only of the ability to move freight, whether it is a few miles more or less, the other roads in Indiana, if they are going to move coal in a competitive market must have the same rates as you have, must they not, from the Brazil-Clinton Field?

A. I think that is axiomatic.

Q. Now, from your long experience as a traffic manager, coal traffic manager, Mr. Kuhls, and leaving out these items of transportation conditions and statistical research, is there any reason why the Brazil-Clinton Group as a whole, with approximately the same distance to Rockford as Springfield has, four miles less than Springfield, should have a rate 17 cents higher than the rate from the Springfield or Central Illinois Group to Rockford?

A. Well, there are some things that enter into it which, of course, may not be pertinent; but the other mines may not need these marketts to the same extent that the mines on the Milwaukee Railroad do.

Mr. Vesey: Could I have that answer?

(Answer read.)

By Mr. Wilkinson:

Q. In other words, if they don't need the market and don't ship their coal in there, it doesn't make any difference what their rate is, it is just a paper rate?

A. That is right.

Q. But if they are going to participate in that market, they must have comparable rates to those of the Milwaukee? [fol. 800] A. I think that is true.

Q. And prior to the disruption of this rate adjustment in 1930 or 1932, when the Illinois Commerce Commission reduced the rates to Rockford and Freeport, the parity between Springfield and Brazil-Clinton, or the relationship of Brazil-Clinton 30 cents under Southern Illinois, had existed for 25 or 30 years, had it not?

A. Back in 1901 and 1902, yes.

Q. And during that period, or at least during your experience, while that old relationship existed, Southern Illi-

nois, Springfield and Indiana were shipping coal to these markets, were they not?

A. That is right.

Q. Since the change in the relationship caused in 1930 and up to, we will say, October of 1940, the bulk of the coal from Brazil-Clinton and Linton-Sullivan that moved to Rockford and Freeport originated on your line from Indiana, did it not? That is, the bulk of the coal from Linton-Sullivan and Brazil-Clinton?

A. Yes, practically all of it.

Q. About 99 per cent, wasn't that your estimate of it?

A. Yes, sir.

Q. Prior to 1930, the other roads, like the C. & E. I. and the Pennsylvania and the New York Central, they originated some coal that moved out?

[fol. 801] Mr. Vesey: We didn't hear that.

By Mr. Wilkinson:

Q. Prior to 1930, the disruption of the rates, the other lines serving Brazil-Clinton and Linton-Sullivan originated substantial quantities of coal moving to Rockford and Freeport, did they not?

Mr. Stadell: I am going to object to that question unless the witness is shown to be qualified to testify with respect to the tonnages moving over those other railroads.

Mr. Wilkinson: I didn't mean exact tonnages. I meant whether they shipped substantial quantities.

Mr. Stadell: He hasn't been shown to be qualified to testify with respect to the tonnages moving over those railroads or the mines they moved from.

Exam. Trezise: I think under cross examination he may testify to it.

Mr. Stadell: I am wondering if this is cross examination.

Mr. Wilkinson: It is not direct.

Mr. Stadell: I was just wondering about that.

Exam. Trezise: Oh, I think we will let him answer.

The Witness: I don't have any figures in my mind, Mr. Wilkinson.

Mr. Wilkinson: All right.

By Mr. Wilkinson:

Q. Before I leave this page 11, I understood from your direct evidence, Mr. Kuhls, that this average difference

which you showed to these representative points of Brazil- [fol. 802] Clinton, having a 22.3 mile longer haul than Springfield to those points, you thought that might or could in some way be justified of having some kind of a differential Brazil-Clinton over Springfield to these representative points, and you referred to some differentials in some rate scales or something of that sort.

A. That figure you gave has been corrected to 24.4.

Q. Very well, 24.4.

A. No, I had no intention of implying that the Brazil-Clinton rates should take a differential over Springfield to any particular or individual destinations. There are some destinations in the southern part of the state, not in the northern part, in the southern half of this suspended territory, where the mileage is in favor of Springfield, and to those few points it probably would be right to have Brazil-Clinton over Springfield, but to the points in the northern part of that territory, such as Rockford and Freeport, there wouldn't be any justification for carrying Brazil-Clinton on a higher level than Springfield.

Q. I take what you mean, as an illustration, at Dixon you show that Brazil-Clinton is 74.5 miles longer haul than Springfield and that it might well be that an exception be made of the parity of the rates between the two groups at Dixon, where there was that substantial difference in mileage.

A. That is right.

By Exam. Trezise:

Q. That, as I understand it, then, is the principle that [fol. 803] you are advocating here?

A. Yes.

Q. The illustration that you have given here is that from Springfield to Rockford you have an average distance of 260.7 miles and you have an average distance from Brazil-Clinton to Rockford of 256.9 miles; and my question is, do you think the principle should be applied with respect to the reasonable rates from Indiana and from Illinois to these respective destinations by taking into consideration the approximate distances? You are subscribng to that principle?

A. When I submitted this exhibit on direct, I said that, as a whole, the difference in the proposed rates, Springfield

versus Brazil-Clinton, appeared to be satisfactory for the purpose of getting this adjustment into effect. Now, I have no intention to advocate any change in the rates that the carriers have proposed and which are under suspension. I think that, as a whole, it is a reasonable relationship.

Q. And you are limiting that principle just to the particular rate here mentioned and you do not go any farther than that with respect to the rates from the respective groups in Indiana and Illinois to the respective destinations. Is that what you mean to infer by your last statement?

A. Yes.

By Mr. Wilkinson:

Q. Following that up, you said, in respect to a question from the Examiner, that the rates as a whole are satisfac- [fol. 804] tory. Now, by that do you mean that the rate of $1.95 from the Springfield Group to Rockford and a rate of $1.95 from the Milwaukee mines in the Brazil-Clinton Group to Rockford and a rate of $2.12 from all the other mines in the Brazil-Clinton Group is satisfactory to you and other carriers in Illinois?

A. It is satisfactory to the respondents that do not take exception to it.

Q. But you don't believe it is satisfactory to the operators in the Brazil-Clinton group that are served by the C. & E. I. and the Pennsylvania and the other lines that serve Brazil-Clinton in Indiana, do you?

A. It may not be.

By Exam. Trezise:

Q. Well, you could have a variation of rates from this origin group. If you are advocating the method of distance from these groups, and where the distances are approximately the same from Springfield and from the Brazil-Clinton Group, on the average, you think the rates should be the same, is that right?

A. Well, they——

Q. That is what you have said, as I understand it.

A. Yes, they could be the same.

Exam. Trezise: They could be the same. All right.

By Mr. Wilkinson:

Q. Well, as a traffic manager you think they should have the same but as a good fellow in this case you don't want to quarrel with the other rate, isn't that right, Mr. Kuhls, [fol. 805] or you don't want to disagree with them in their relation?

Exam. Trezise: I am sure that is going to help the Commission a lot in deciding this case.

The Witness: The proposal of the carriers is to increase rates as they exist today in the same amount in cents per ton. That is our proposal and I am afraid we would be here a long time if we went into divisions of these present relationships and leveling off of the rates on different origins.

By Exam. Trezise:

Q. What do you mean by those two words that you stated, the leveling off and division of whatever you said it was? I don't understand what you are talking about, quite.

A. Well, I am speaking to the adjustment as a whole, and you will find that there are some of the points normally taking the Northern Illinois District rates, varying rates, several to the particular destination, and if we had to arrive at one rate on each mine in the Northern Illinois District for the Fulton County and so-called arbitrary points near Fulton County, I say we would be here a long time.

Q. Oh, but you do advocate that we follow somewhat the same principle that was followed in the Midland case in fixing differentials, so far as your Brazil-Clinton and Linton-Sullivan goes, but you stop right there. You said you didn't want to go any further than that because your line perhaps was not interested. The Commission would like to get your view on it, Mr. Kuhls. I think it would be very helpful. [fol. 806] If you think that the grouping from Indiana should be somewhat the same as established in the Midland case, in its relation to the Illinois groups, if it is necessary that some of those things be ironed out, perhaps you could give us some very good advice upon that.

A. Well, all that may follow, but we are here to show that the rates that we have proposed are not more than maximum reasonable rates, and in a good many instances they are less than maximum reasonable rates.

Q. Well, you do not subscribe to the theory of having a rate of $2.12 from your—let's say $2.12—from your Brazil-

Clinton mines on some lines and $1.95 from others? You, as a rate man and the experiences you have had, that isn't quite the right thing, is it?

A. Well, I am sure the Commission can deal with that situation without any suggestions from me.

By Mr. Vesey:

Q. In order that I might understand this answer, may I ask whether you meant that the disparity was so obvious that anyone could deal with it?

Mr. Hunter: I think he meant the Milwaukee Railroad would have no objection to the other lines meeting the Milwaukee rate.

By Mr. Hunter:

Q. Is that what you meant, Mr. Kuhls?

A. We would like approval of our rate, and if the other railroads feel that they should meet that rate, why, of course, we wouldn't have any just grounds to object to it.

[fol. 807] By Exam. Trezise:

Q. Well, you do think that the rate should not be more than $1.95 from this Brazil-Clinton Group to Rockford? That is right, isn't it?

A. I think that is self-evident by the distance from the group as a whole. The Brazil-Clinton Group as a whole is less than the Springfield Group and it doesn't seem proper, when we get down to it, that the rate should be higher from the Brazil-Clinton Group than from the Springfield Group.

Q. Then the sum and substance of your testimony is to cast some aspersions on this $2.12 rate that is proposed here by the other lines from the Brazil-Clinton Group to Rockford?

A. I think so.

Exam. Trezise: Thank you.

By Mr. Wilkinson:

Q. Now, on this question of distance, where you have an adjustment that takes in all of Northern Illinois, or did; and takes in Wisconsin and Iowa and Minnesota, you have the same adjustment in all of the surrounding territory of

a parity of rates as between Brazil-Clinton and all the mines, and the mines in the Springfield Group, is there any reason, from a traffic standpoint, Mr. Kuhls, why that adjustment should be broken down in spots in Northern Illinois, where there is a difference of 15 or 20 miles one way or the other, and yet maintained in the territory beyond?

A. No, I think the hauls are sufficiently long to justify a parity.

[fol. 808] Q. In other words, Mr. Kuhls, at Belvidere, where Brazil-Clinton, on the average, is 18 or 19 miles less than Springfield, you have a rate from Brazil-Clinton under the Springfield rate, while at Byron, where the Brazil-Clinton haul is seven miles more than Springfield, your have a rate from Brazil-Clinton that is a little bit more. In other words, you would treat it all as a unit in these larger adjustments and ignore those slight differences in mileages?

A. Yes, that is right.

Exam. Trezise: And what your question relates to, Counsel, is destinations that are all over 150 miles?

Mr. Wilkinson: Oh, yes, long-haul destinations where differentials apply in differential territory.

By Mr. Wilkinson:

Q. Now, will you turn to page 12 of your exhibit and we will look at Rockford again there on page 12, where you show the differentials as between the Brazil-Clinton and the Linton-Sullivan group. Now, you show 5 cents and 10 cents at Rockford. Now, that 10 cents is the differential as between the mines on your line in Brazil-Clinton and the mines on your line in Linton-Sullivan, is that not correct?

A. Yes, and also the Illinois Central.

Q. Yes. We will come to that hybrid in just a minute.

Now, as between the mines on the C. & E. I. in Linton-Sullivan and the mines on your line in Brazil-Clinton, going to Rockford, the differential is more than 5 or 10 cents, is it [fol. 809] not?

A. It is 12 cents, I believe.

Q. Well, as a matter of fact, isn't it 25 cents? Your rate from Clinton to Rockford is $1.95 and the C. & E. I. rate Linton to Rockford is $2.22, isn't that correct?

A. I though it was $2.12, Mr. Wilkinson.

Q. No, it is $2.12 from Brazil-Clinton, and it is $2.22 from Linton, isn't it, or $2.17?

A. $2.17. They have a 5 cent differential there.

Q. Yes. Now, as between the C. & E. I. mines in Linton and your mines in Clinton, the differential is 22 cents, isn't it?

A. That is right.

Q. Now, that does not appear——

Mr. Vesey: Just one moment. In view of that answer, I move to strike page 12 physically from this exhibit in that it incorrectly purports to show that which it was represented to show as an exhibit, in that it does not show the differences here in terms of cents per ton, differential between the Brazil-Clinton and Linton-Sullivan districts in Indiana.

Exam. Trezise: Well, because it is wrong, is that what you mean?

Mr. Vesey: Yes, because to anyone who should look at this exhibit without reading the testimony in connection with it, it shows that there are other differentials that go into these two districts. It would create a misapprehen- [fol. 810] sion in that individual's mind; and in view of the importance of the question here of rate differences and rate differentials for differences in distances, I submit that that page is highly objectionable.

Mr. Biaett: Does Mr. Vesey have any other grounds than the superficial grounds which he has stated for the objection?

Mr. Vesey: If that be superficial, I would like to know what a concrete ground is, when it comes to an exhibit.

Exam. Trezise: The Examiner hasn't heard any satisfactory reason to exclude it, Mr. Vesey.

The Witness: May I say that these differentials shown on sheet 12 are the differences in the individual rates appearing in Exhibit No. 4. They don't purport to show the difference between a low rate on one railroad and a high rate on the other, but the differential observed by the individual railroad publishing its own rates.

Mr. Vesey: May I ask a question right there? Would you mind, Mr. Wilkinson?

Mr. Wilkinson: No, go ahead.

By Mr. Vesey:

Q. Page 12 doesn't show that that exhibit purports to apply only to the rates applicable to the mines on the Milwaukee Railroad, does it?

A. No, it applies to all rates shown in Exhibit 4.

Q. And it purports to show the differences in terms of cents per ton applicable between the Brazil-Clinton, Linton-[fol. 811] Sullivan Districts in Indiana on coal moving to the towns shown in the first column, does it not?

A. Yes, that is correct.

Q. And that, as it stands here, it does not show the difference in terms of cents per ton applicable to the mines in the several districts moving to those towns via the various roads moving such coal, does it?

A. It does not purport to show that. It shows the differentials between the rates for which the authority is shown on the bottom of the sheet; Exhibit No. 4, Section III. Those are the differentials between rates shown in Exhibit 4. I don't see what is wrong with it.

Mr. Wilkinson: Mr. Kuhls, let me inject a question on that subject.

By Mr. Wilkinson:

Q. In your column under "Brazil-Clinton," you have shown the average haul via short tariff routes from all of the mines via all of the lines serving Brazil-Clinton, have you not?

A. The mileage, yes, sir.

Q. Now, that mileage is the average of the group?

A. That is right.

Q. That is clearly indicated by the same reference to Rockford, where the average from the group is 254, from your line is 237 and rfom the $2.12 rate lines, 256 miles. The same is true with regard to the distances from Linton-Sulli-[fol. 812] van. They are the average of the distances via short tariff routes, irrespective of the rates that apply?

A. That is right.

Exam. Trezise: That is right.

By Mr. Wilkinson:

Q. Now, when you are treating with mileages, you are treating those groups as a unit, are you not, each group as a separate unit and as a whole?

A. Treating the mileage as a unit, yes.

Q. Now, when you come over to your differential mileages, you treat each group as a whole, do you not?

A. No, I am treating,——

Q. No, I am just talking to your differential mileages here, your 43 and 37?

A. Yes, the mileages as a whole.

Q. But when you come over to your differential in rates, I now understand that you are treating railroad by railroad on that differential and not an average group differential?

Exam. Trezise: Well, he wouldn't have two differentials out there if he had only one line. He has got five and ten.

Mr. Wilkinson: Yes.

Exam. Trezise: He has two of them, evidently.

Mr. Wilkinson: But he hasn't got all of them. There are other differentials in there and his exhibit doesn't show, on this 5 and 10, that he is treating with individual railroads to arrive at that 5 and 10.

[fol. 813] The Witness: I use different authorities. I used Exhibit 3 for the distances.

By Mr. Wilkinson:

Q. Yes.

A. I used Exhibit 4 for the rate. There is no tie-up between the two.

By Exam. Trezise:

Q. Let's ask about Byron, then. You say 5 and 10. Are there any other differentials except 5 and 10?

A. Not in the rates published in Exhibit No. 4.

By Mr. Wilkinson:

Q. Well, now, if I take Exhibit No. 4 to Byron and I find rates to Byron of $1.90, $2.00 and 2.07 from Brazil-Clinton to Byron, three different rates. Now, as between that $1.90 rate via the Milwaukee from Brazil-Clinton and your $2.00 rate from Linton-Sullivan to Brazil-Clinton, there is a differential of 10 cents, isn't there, which you have shown on page 12?

A. Yes, sir.

Q. As between your $1.90 rate from Brazil-Clinton to Byron and some road's $2.12 rate from Linton-Sullivan to Byron, you have a differential of 22 cents—or 27 cents, do you not?

A. No, I wouldn't call that a differential.

Q. Oh, you don't call that a differential?

A. No, it is a difference.

Q. I see. When it comes to differentials in rates, you split up the groups, but when it comes to mileages, you want to put them all in one boat?

[fol. 814] Mr. Bather: I object to Counsel's arguing with the witness. Mr. Kuhls explained this exhibit two or three times and he persists in arguing with him. I think the matter is clear.

Mr. Vesey: I submit, if the Examiner please, that is a further reason for striking this particular page from the exhibit, and I now renew the motion on the additional ground that, as evidenced by the examination, page 12 of this exhibit tends merely to confuse rather than to clarify the evidentiary matter important in this proceeding.

Mr. McElroy: I take it that motion was directed to the Interstate Examiner?

Mr. Vesey: That is right.

Exam. Trezise: Pardon me while I do a little figuring here.

By Exam. Trezise:

Q. Mr. Kuhls, do you say that the differential between these respective groups, Brazil-Clinton and Linton-Sullivan to Byron would be, under the proposed rate, 5 and 10 cents?

A. Yes. Rates published by one railroad carry a differential of 10 cents. Rates published by another railroad carry a differential of 5 cents.

Q. And considering the same carriers that carry these rates from the respective points, your 5 and 10 cents would be correct?

A. That is right.

[fol. 815] Q. But if you took the $2.00 proposed rate and compared it—that is from Brazil-Clinton—and compared it with the $2.12 rate from the Linton-Sullivan group, you would have 12 cents, but you didn't mean the exhibit to indicate that sort of a relatidnship?

A. That, Mr. Examiner, in my opinion is the difference, and if you didn't consider it as such, you would not have a 30 cent differential between Springfield and Southern Illinois.

For example, to Dixon the Wabash Railway publish a rate of $1.80 from the Springfield District. The other railroads

publish $1.70. Therefore the differential between Springfield and Southern Illinois is not 30 cents. It is only 20 cents when you consider the Wabash mines.

Q. But with the explanation that your differentials or differences here that you show are designed to show the differences of certain same carriers, so to speak, from the respective groups, it would be 5 and 10?

A. That is right.

Mr. Wilkinson: Well, right along that line, looking at page 6 of the proper section in Exhibit No. 4, or No. 3, I find that the Illinois Central Railroad published a rate of $1.95 to Byron from its mines in the Linton-Sullivan field. I don't find any publication of rates by the Illinois Central from any mines in the Brazil-Clinton field. Now, do you mean that there is no differential or relationship between [fol. 816] the rates published by the Illinois Central and the Brazil-Clinton rates, or just differences?

Exam. Trezise: Well, I meant that where the carriers do publish rates from the two groups, that is what it is, as between carriers; is that correct?

The Witness: That is right.

Mr. Wilkinson: Now, we understand each other.

Exam. Trezise: I think it is clear on the record what it is, however infirm it may be from the standpoint, considering the relationship of the groups. I think it is perfectly clear and we will accept it.

By Mr. Wilkinson:

Q. You mentioned, Mr. Kuhls, a few minutes ago that a direct line, single-line haul had advantages that should be recognized in rates. Do you think that a direct single-line haul that is 30 or 35 miles longer than a two-line haul justifies a rate of 10 or 12 cents less than the two-line haul from the same origins?

A. No, I don't think it makes any difference.

Q. A two-line haul as against a single-line haul shouldn't make any difference in the rates on these longer hauls?

A. The Commission has recognized the difference in one instance where considerable traffic was involved, that is lignite coal from North Dakota to—North Dakota and South Dakota, they prescribed a distance rate for joint-line hauls 20 cents per ton higher than the scale for single-

[fol. 817] line hauls, but outside of that I don't think there are very many cases where there is a distinction.

Q. Now, I direct your attention to page 30 of Section V of Exhibit 3. Have you got it?

A. Yes, sir.

Q. Now, as a traffic man, is there any good and valid reason for a rate of $1.90 via the I. C. Railroad direct to Rockford from the Linton-Sullivan Group for a haul of 348.7 miles and a $2.02 rate via that line in connection with your line for a 311 mile haul, or hauls via the other carriers ranging from 270 miles up to 317 miles?

A. I don't believe so.

Q. Now, that same thing exists, does it not, Mr. Kuhls, at a number of these suspended points, that is, the points to which the rates are suspended that do not appear in these various exhibits? That is, you have taken some representative points but you have the situation existing to many points in Northern Illinois where your road publishes a rate from Linton-Sullivan or Brazil-Clinton that is less than the other roads serving those groups where the destination is on your line, but where the destination is not on your line you publish the same rate as the balance of the group, isn't that correct?

A. That is correct.

Q. Now, the Illinois Central is following the same pattern, is it not, of publishing the competitive rate, the rate [fol. 818] the same as yours, where it is hauling coal to a destination on its own line in this territory?

A. Yes, it holds the Rockford-Freeport rates as maximum.

Q. So that it is recognizing by the publication of rates a truism, you told us, if they want to compete in the business they have got to be competitive with these Illinois rates?

A. I assume that was the reason that they made the adjustment.

Q. Now, in these exhibits, Exhibit No. 3, all of the rates and the distances from Indiana mines are not shown, are they, Mr. Kuhls?

A. All the rates and distances?

Q. Yes, from origin points in Indiana. I will withdraw that question.

You publish rates from three or four points of origin in Indiana which are not shown in these exhibits, is that not correct?

A. Oh, you are referring to——

Q. I am referring to what is sometimes called your Princeton-Ayrshire Group.

A. I didn't know we had one.

Q. I said "sometimes".

A. I never heard that we had such a group. It is news to me.

Q. Well, you do publish some rates from some mines that are south of your southernmost Linton-Sullivan Group, do you not?

A. Yes, we have a few——

[fol. 819] Q. And those rates, for some reason or other, happen to be 7 cents per ton higher to all of these destinations than your rate from the mines in the Linton-Sullivan Group, is that correct?

A. To these destinations, yes.

Q. Yes.

A. And others, of course.

Q. And others. Now, generally speaking, the other——

Mr. Cardy: I didn't hear that. What destinations? He said "these destinations."

Mr. Wilkinson: These destinations and others in this territory.

Mr. Vesey: Is that from the A. W. W. mines?

Mr. Wilkinson: No, these are from mines on the Milwaukee Road.

Mr. Vesey: The Princeton-Ayrshire Group?

Mr. Wilkinson: Well, they are south of Linton-Sullivan.

Exam. Trezise: They haven't been named yet as to what group they are in. They are south of the Linton-Sullivan.

By Mr. Wilkinson:

Q. Generally into this territory as between the mines on the C. & E. I. and the New York Central and other roads other than the Milwaukee, serving the Linton-Sullivan Group, and the Princeton-Ayrshire Group, and on the Milwaukee to points in Wisconsin, Iowa, and Minnesota, the differential between the Princeton-Ayrshire Group and the [fol. 820] Linton-Sullivan Group is 7 cents, is that not correct?

A. To that territory you named.

Q. Yes. And on these mines that are in some unnamed group on your line, the differential over the mines in the Linton-Sullivan Group is 7 cents?

A. It so happens, to this territory.

Q. Yes.

A. But that is not the case in all instances. Princeton to Chicago is 12 cents over Linton-Sullivan and these mines are 7 cents over Linton-Sullivan or 5 cents less than Princeton.

Q. Now, there is a difference in the differential to Chicago and I believe right along the lake shore in Wisconsin, where the differential is, between Linton-Sullivan on the one hand and Princeton, is a nickel wider than into the territory west of that little strip, and that was the result of the reduction ordered in the old Indiana-Illinois Coal Cases, 128 I. C. C., was it not?

A. Yes, I mentioned that because I didn't want to leave the impression that these mines were on the Princeton basis. It so happens that the differential is the same to this particular territory.

Q. And the differential is the same to all territory except to Chicago and that narrow strip in Wisconsin?

A. And Indiana.

Q. And Indiana?

[fol. 821] A. The State of Indiana.

Q. Well, in Indiana the standard differential doesn't apply on those shorter hauls in Indiana, does it?

A. That is right. The rates from these particular points are lower than the Princeton group.

Q. There is a different grouping as Indiana moves east than as it moves west and north?

A. That is right.

Q. That is a different differential adjustment?

A. That is right.

Q. Now, if these mines of yours which you say are not in the Princeton-Ayrshire group but take the same differential into this territory were included as a part of the Princeton-Ayrshire Group, the result would be to reduce the average distance from the Princeton-Ayrshire Group to all of these representative destinations, would it not?

A. That is right. The tail would wag the dog.

Exam. Trezise: Mr. Wilkinson, if you have many more questions, we will have to suspend for a little while.

Mr. Wilkinson: I have a few more.

Exam. Trezise: Take a short recess.

(A short recess was taken.)

Exam. Trezise: All right, gentlemen, when you are ready, we will continue. Mr. Wilkinson.

By Mr. Wilkinson:

Q. Mr. Kuhls, before we leave this question of rates of [fol. 822] differentials, you were a witness in Docket 4368, were you not, which involved this same territory, generally?

A. I was.

Q. And you are familiar with the decision of the Interstate Commerce Commission in that case, are you not?

A. Yes, sir.

Q. On behalf of the Milwaukee Railroad, are you opposed to publishing rates from the Illinois and Indiana Groups in line with those approved by the Interstate Commerce Commission in its decision in Docket 4368?

A. Well, the answer there has to be yes because we didn't make any adjustment in the rates following that decision.

Q. That decision would have preserved and would have restored the differentials as between the Illinois, Indiana and Western Kentucky Groups——

Mr. Cardy: Mr. Wilkinson, we can't hear you at all.

By Mr. Wilkinson:

Q. I say that decision would have restored the differentials as between the Indiana groups and the Illinois groups as they existed prior to the reductions under the Illinois Commerce Commission's order of 1930 or 1932, would they not?

A. That is my recollection.

Q. The only change as to the status that existed prior to the Interstate Commerce Commission's decision is that the rates from Linton-Sullivan would have been in all instances [fol. 823] 10 cents over the rates from Brazil-Clinton in lieu of the 5 cent differential that had previously existed to a number of these destinations?

A. Yes, sir.

Q. And that adjustment would have been the same as the adjustment to all destinations in Wisconsin other than Beloit and the destinations in Iowa and Minnesota?

A. That is right.

Q. And the Milwaukee Railroad is opposed to that adjustment?

A. Well, the Milwaukee Railroad, of course, is the respondent in this case and we have made certain proposals and we hope that proposal is given effect.

Q. Well, the proposals, as a matter of fact, were the result of group action by a number of carriers, were they not?

A. Compilation of the data was handled by a committee of railroads.

Q. Well, as a matter of fact, didn't you and the other railroads in Indiana, except the Southern and one or two of the others, act in concert in proposing tariffs that were filed about simultaneously, publishing this adjustment that you are now proposing?

A. Well, we seem to have the same opinion as to what should be done to stop these further reductions to Wisconsin destinations by reason of the low level of rates to Northern Illinois. Then we had the decision of the Com- [fol. 824] mission in the Beloit case to comply with.

Q. Well, you complied with a similar decision some years ago, did you not, without any great difficulties?

A. By reducing the rates, yes, but we didn't want to make a further reduction.

Q. Would it have been impossible, in your opinion, as a traffic man, would it have been impossible to have complied with the order in the Beloit case by increasing the rates to Rockford and maintaining the old standard differentials between the various groups?

A. I think it would, because the order required the publication of rates to Beloit 15 cents per ton over the rates in effect to Rockford.

Q. Well, the old order required 25 cents over the rates to Rockford, didn't it?

A. That is right.

Q. And you did that in the old case by publishing the rate from Southern Illinois and letting the other groups in Indiana and Illinois fall in under their standard differentials? That is what you did before, isn't it?

A. I believe so.

Q. Why couldn't you have done it this time, by increasing the rate to Rockford and letting all the other groups

fall into the Rockford picture under their standard differentials?

A. Well, we wanted to make Rockford 15 cents under the [fol. 825] Beloit rather than Beloit 15 cents over Rockford.

Q. Then why couldn't you have done that; just reduced the rate to Rockford so that it was 15 cents under Beloit?

A. Well, that would have been a reduction instead of an advance.

Q. I see. I thought that is what you said you wanted to do, by leaving the rate to Beloit where it was?

A. Maybe I misstated it. We wanted to make the rates to Beloit 15 cents over Rockford rather than making Rockford 15 cents under Beloit.

Mr. Bather: No, that isn't a correct answer.

By Mr. Bather:

Q. In other words, you wanted to make the rate to Rockford 15 cents under the existing rate to Beloit?

A. No.

Q. Then how did you arrive at the increase?

A. Beloit 15 cents over the existing rates to Rockford.

By Mr. Wilkinson:

Q. But you have increased the rates to Rockford from all of the Indiana points except via your own line, haven't you?

A. No, we are proposing an increase in our rates from, well, the Clinton District, $1.80 to $1.95.

Q. That is to Rockford. And your rate to Beloit will be what, $2.10 from Brazil-Clinton?

A. That would be 15 cents higher or $2.10.

Q. But the rates from the other carriers serving Brazil-Clinton will be 12 or 17 cents higher than that, will they not?

[fol. 826] Exam. Trezise: 17 cents higher, is that what you said?

Mr. Wilkinson: That is what I asked him, if that is what it would be.

Exam. Trezise: Whether it would be 17 cents higher? That is under the proposed rates?

Mr. Wilkinson: Yes.

The Witness: Our rate to Rockford will be $1.95.

By Mr. Wilkinson:

Q. That is an increase of 15 cents over your present rate?

A. That is right, and our rate to Beloit will be $2.10.

Q. Which is no increase?

A. No change.

Q. No change at all in your rate to Beloit?

A. That is right.

Q. But for the other carriers serving Brazil-Clinton, their rates would be increased both to Rockford and to Beloit, would they not?

A. Yes, sir, $2.12 at Rockford, which is a 15 cent increase.

Q. So that as a result of this proposal, instead of having a parity of rates at Beloit, Wisconsin, from all the mines in the Brazil-Clinton Group, you would have the mines on the Milwaukee with a rate of $2.10 and the mines of the C. & E. I. and other roads with a rate of $2.27?

A. That is right.

Q. The same thing would be true with respect to Linton-[fol. 827] Sullivan, would it not?

A. Yes, sir.

Q. That is with the 10 cent differential of Linton-Sullivan over Brazil-Clinton.

Mr. Cardy: Mr. Wilkinson, could you ask this question, whether or not the differential would follow the rates from the carriers taking the higher rate and not the Milwaukee more distant groups? Is that true?

Mr. Wilkinson: You ask what you have in mind, Mr. Cardy.

By Mr. Cardy:

Q. In other words, in applying the rates from the Princeton District, a differential would follow the rates from the carriers taking the higher rates, is that true, not the Milwaukee rates?

A. Yes, the higher rate.

By Exam. Trezise:

Q. It would preserve the present differential, is that the point?

A. It would make Beloit 15 cents over Rockford and would use the present rate from the Princeton Group to Rockford on which to base the rate to Beloit.

By Mr. Cardy:

Q. In other words, it would preserve the differentials as between all of the lines except the Milwaukee Railroad?

A. Well, it would preserve all the differences.

By Mr. Wilkinson:

Q. Well now, Mr. Kuhls, is that exactly correct? Is it not a fact that the Southern Railway, serving the Princeton-[fol. 828] Ayrshire District, has not increased its rates to Beloit to this basis?

A. Well, let's see. Rockford from the Princeton Group would be $2.24 and the present rate to Beloit is $2.27.

Q. Via the Southern?

A. The present rate to Beloit, yes.

Q. Oh, yes. Now, I am talking about the new rate, the proposed rate.

Exam. Trezise: To Beloit?

Mr. Wilkinson: Yes.

Exam. Trezise: Of the Southern?

Mr. Wilkinson: Yes, the proposed rate.

By Exam. Trezise:

Q. Would you say $2.27?

A. Yes, sir.

Exam. Trezise: That is right, isn't it?

Mr. Wilkinson: That is the proposed rate, yes.

The Witness: That is the present rate.

By Mr. Wilkinson:

Q. That is the present rate and that is also the proposed rate?

A. No change.

Q. There is no change by the Southern, but you would increase the others 15 cents a ton to $2.42. In other words, Mr. Kuhls, the Southern has decided it would like to continue to participate in the possibility of traffic to Beloit?

A. I haven't gone into the Princeton rates. I am not [fol. 829] familiar with it, with the present and proposed.

Q. From your experience as coal traffic manager in soliciting freight, your familiarity with the field of coal, would

you think it would be possible for coal of the same quality to deliver out of the same district with a difference of 15 cents in the freight rate?

Mr. Biaett: May we have that question read, please, Miss Reporter?

(Question read.)

The Witness: Are you talking about the Princeton coal?

By Mr. Wilkinson:

Q. Well, Princeton——

A. Between Southern versus other railroads?

Q. Yes.

A. Well, right at the present time, of course it doesn't make any difference what the rates are, the coal would move.

Q. I am talking about normal competitive conditions.

A. Well, in my opinion I don't——

Mr. Stadell: Now, I object to the witness giving an opinion on that, Mr. Examiner, on the grounds that there are many things that influence the sale and the movement of coal besides the difference or the coal being of the same quality. It may be influenced by the sales effort, cost of production, for instance; a great many other elements besides the quality. In addition, this witness hasn't been shown to be qualified to testify with respect to the com- [fol. 830] petition between any of these coals in the destination territory involved.

Exam. Trezise: Well, this was a hypothetical question, in a sense. I don't know whether he is qualified to answer the question or not.

By Exam. Trezise:

Q. Having all these things in consideration, Mr. Kuhls, that Mr. Stadell has mentioned, what is the sense of having different rates in the same group when they are in the same general producing territory? That is what the Commission wants to know and we might as well hit it one way as another. We have been beating around the bush here, going one way and then another. Why can't we have an answer to the question?

Mr. Stadell: You asked him a different question.

Exam. Trezise: I have asked him a different question.

Mr. Stadell: All right.

Exam. Trezise: It is true.

Mr. Vesey: If the Examiner please, I submit he has already answered the question by his expose of the freight picture of the Milwaukee Railroad.

Exam. Trezise: All right.

The Witness: In my opinion, in normal times coal from the same origin group would have to have a parity of rates with competing coal to be marketed in this territory.

By Mr. Wilkinson:

Q. This little maverick group of three small mines on your line that were south of Linton-Sullivan, what rates [fol. 831] are you proposing from those mines to Beloit?

A. They would carry the present differential of 7 cents over the proposed rates from the Linton Group. They would follow along with whatever is proposed from the Linton Group.

Q. In these class rates on pages 14, 15, 13 of your exhibit——

Mr. Cardy: What was that page, Mr. Wilkinson?

Mr. Wilkinson: 13 to 15 of Exhibit 12.

By Mr. Wilkinson:

Q. Coal is not given a letter classification in the Illinois Freight Association territory, is it?

A. It is in Western Classification. I am not sure now whether it has a letter rating in Illinois territory.

Q. Now, these rates that you show on page 13, are those rates under which substantial quantities of these various commodities move or are those rates the result of a spasmodic or a single shipment of a car or two and then an application for, claim for reparation based on paying an unreasonable rate and these rates fixed as the basis of awarding reparation?

A. It is my understanding that there is substantial movement on these ratings.

Q. Did you check into any of these cases to see whether there was a movement of the commodity at all comparable with the volume of the movement of coal in this general territory?

A. No, I didn't check into that feature.

Q. So we don't know whether or not this 20 per cent of first class that was applied to glue stock in 161 I. C. C. [fol. 832] moved five cars of glue stock or five thousand cars?

A. No, without anything in the record, you wouldn't know that.

Q. Well, that would have some bearing upon the question of the percentage of first class that a commodity would take, would it not, the volume of movement?

A. Oh, yes, and appreciating that we have not proposed 20 per cent of first class. These suspended rates that I testified to were generally less than 12 per cent.

Q. The first class rate, like all class rates, is really kind of a mileage scale, isn't it?

A. Yes. All your class rates are on a mileage basis.

Q. And the entire structure of that class rate situation is different from the coal rate structure, isn't it, in this territory, where we go by groups and differential relationships?

A. Yes.

Q. The two are hardly comparable, are they, Mr. Kuhls?

A. Well, they are not comparable in some senses but I think for the purpose that it has been submitted here, that is, a yardstick to measure the level of the rates, I think it is pertinent.

Q. Well now, class rates are governed very closely by the mileage, is that not true, between the point of origin and the point of destination?

A. Yes, and the Commission has prescribed a good many mileage scales on coal.

[fol. 833] Q. Yes.

A. As a basis.

Q. But your group rates on coal to a large extent ignore distance, do they not?

A. They do to some extent, yes.

Q. Well, now, for example, you have the same rate on coal from Springfield, the City of Springfield, as you have from down in the very farthest southwest corner of the Springfield Group, the difference of 100 miles, maybe? You would have the same rate? That would be impossible under any class rate structure?

A. That is true.

Exam. Trezise: Haven't you gotten all the answer out of him you can get?

Mr. Wilkinson: I was trying to find out how this thing had any bearing whatsoever on this case; these exhibits.

Exam. Trezise: Well, if you want to pursue it further, go ahead.

Mr. Wilkinson: No, if it is clear to you, why, you are the one I want to satisfy.

By Mr. Wilkinson:

Q. You showed a lot of rates from the Outer Crescent to Wisconsin destinations. Isn't a great deal of Outer Crescent coal that moves to these Wisconsin destinations dock coal that moves up to the lake docks and then inland via your line or the North Western to destination?

A. There was a very substantial movement on the rates [fol. 834] shown on sheet 17, and these are all rail rates from the mines to the destinations.

Q. Yes, but I am asking you of the steam coal shipments up there to the industries, isn't that very largely dock coal?

A. Well, there is very little industrial steam coal moving to these destinations. It is mostly domestic.

Exam. Trezise: By rail you mean? By rail?

Mr. Wilkinson: All rail, I understood his answer.

The Witness: By rail; or from the docks by rail.

By Mr. Wilkinson:

Q. You show on pages 18 and 19, rates in Ohio. Now, isn't it a fact that, generally speaking, the rates on all commodities within Ohio are on a slightly higher level than the rates on all commodities within Illinois Freight Traffic territory?

A. I couldn't answer that, Mr. Wilkinson. I am not familiar with it.

Q. So the only thing that appears from pages 18 and 19 is a rate for a certain distance, and you are not trying to compare anything else there with our rates in Illinois and Indiana?

A. It is to show that the rates that we are proposing are still what might be termed the lowest in the country.

Q. But that doesn't, in your opinion, necessarily make the rates too low in this territory, does it?

A. I know nothing peculiar about this territory which would justify lower rates than——

[fol. 835] Exam. Trezise: What rates too low in what territory?

Mr. Wilkinson: Well, he says this is the lowest in the entire country, and I said that might not make our rates in this territory too low or unreasonably low.

Exam. Trezise: You mean the proposed rates?

Mr. Wilkinson: Yes.

Exam. Trezise: Proposed rates. Thank you.

By Mr. Wilkinson:

Q. Do you have any idea, Mr. Kuhls, as to what proportion of the production of Illinois or of Indiana goes into the territory that is involved in this proceeding? I am referring to page 20, where you show production of the two states.

A. Well, we don't have the complete movement to this whole territory. We have it for——

Q. 1941?

A. No, we have it for individual destinations, as shown in Robertson's Exhibit 4, Section VIII, but that would only give you a part of the picture.

Q. Yes.

A. You couldn't form an estimate of the tonnage moving to the entire affected territory.

By Exam. Trezise:

Q. And the points involved in this proceeding, are you now talking about the destinations in Northern Illinois only?

A. Yes.

[fol. 836] Q. That is what you have in mind when you said "in this proceeding"?

Mr. Wilkinson: Yes.

The Witness: Yes.

Exam. Trezise: Thank you.

By Mr. Wilkinson:

Q. Now, will you refer to page 21 of your Exhibit 12, Mr. Kuhls. You show certain firms, manufacturers, using

coal from Indiana, Illinois or Kentucky. What period does this exhibit cover?

A. The information was obtained in February and March of this year and covered the current purchase or consumption.

Q. As of February and March of 1943?

A. That is right.

Q. It doesn't necessarily mean that they invariably use coal from Illinois at the Anderson Metal Products Company at Rockford?

A. No, at that particular time they were using the coal indicated.

Q. And they might at some other time use Indiana coal or West Kentucky coal?

A. That is right.

Q. And that is true of all these companies?

A. That is right.

Q. As a matter of fact, some of these companies, to your knowledge, use coal from all three sources, do they not, [fol. 837] West Kentucky, Illinois, Indiana?

A. Well, sheet 11 shows, for example, a firm at Rockford using both Indiana and Illinois coal during February and March, and there is one at Beloit that used coal from Indiana, Illinois and Kentucky.

Q. That was concurrently?

A. Yes.

Q. But I say others of them use one and then another, just depending on the price?

A. I think so.

Mr. Vesey: I object to that, unless he knows. I move that that answer be stricken unless the witness states that he knows that to be the fact. I don't care about what he thinks.

The Witness: Well, I know of industries on the Milwaukee Railroad to which we haul coal from mines on our line in Indiana for certain periods of the year and then other periods we handle the coal from connecting lines, coal that originates in Illinois.

By Exam. Trezise:

Q. You know that much?

A. Oh, yes, yes.

Exam. Trezise: We will let it stand, then.

By Mr. Wilkinson:

Q. Now, in your Exhibit No. 12 you showed some percentages of 23922 scale from Southern Illinois to a number of destinations which had hauls in excess of 300 miles. In your Exhibit No. 13, where you show that scale, it does not [fol. 838] exceed 300 miles.

A. Yes, we should have shown that the scale was extended beyond 300 miles at a 5 cent—no, at an 8 cent rate of progression for each 25-mile block beyond 300.

Q. And that is the way you did it, to arrive at the percentage of such scale which you show, for example, on page 9 of Exhibit 12?

A. Yes, sir.

Q. You follow it out, then, or you did on the 23130 scale, of extending it at the same rate of progression 7 cents per block?

A. Yes, sir.

Q. Beyond the 100 miles of the scale provided by the Commission's order?

A. That is right.

Q. Now, the Docket 23130 scale, was it ever applied to the creation of rates into the part of Illinois to which the 23922 scale was promulgated for application or to create rates?

A. It was not prescribed for the same territory but the railroads have voluntarily reduced the rates within Illinois to basis of the 23130 scale in the territory to which the 23922 scale was prescribed.

Q. And the 23922 scale, I understood you to say, was to enable the Indiana shippers to ship into that Eastern-Central part of Illinois in competition with Illinois producers?

A. That is what the Commission stated.

[fol. 839] Q. To meet that competition?

A. That is right.

Q. In there. And is it universally only 5 cents higher than the minimum scale prescribed in 23130?

A. Yes, to the extent that the——

Q. Up to that 100 miles?

A. —that the distances are comparable, yes.

Q. I see. I assume that these figures that appear on Exhibit No. 13 are the scales as promulgated by the Com-

mission plus the general advances that have been authorized by the Commission since the date of their promulgation?

A. Yes. The heading says "Including Ex Parte 115 increase but not including Ex Parte 148."

Q. Is this Ex Parte 148 the one that was suspended by the Commission?

A. That is right.

Q. About thirty days ago?

A. That is not included.

Q. In your Exhibit 14 you show Fulton County as one of the origins that is not in the differential rate adjustment.

A. No, I said individual points not assigned to any particular group; also Fulton County.

Q. Oh, also Fulton County?

A. Yes, sir.

Q. Now, these mileages and rates from Fulton County, [fol. 840] do you consider that as separate from what we sometimes term the Fulton-Peoria Group?

A. Yes, Peoria is shown separate from Fulton County in Exhibit 14.

Q. Well, Peoria is not shown in Exhibit 14?

A. Yes, line 5, you notice.

Q. Oh, I see.

A. Line 5; 13, 21, 29.

Q. So they are not grouped together in this territory generally, going into this affected territory generally?

A. No, sir.

Mr. Wilkinson: That is all. Thank you.

Exam. Trezise: We will adjourn until two o'clock.

(At 12:30 p. m., recess taken to 2:00 o'clock, p. m.)

[fol. 841] Afternoon Session

The hearing was resumed pursuant to recess.

2:00 o'clock P. M.

Exam. Trezise: All right, gentlemen, when you are ready, let's continue.

W. H. KUHLS resumed:

Examination.

By Exam. Trezise:

Q. Mr. Kuhls, your line does not propose increased rates on the short haul. The Milwaukee does not have any short-haul rates, do you?

A. No, we do not.

Q. I was about to ask you if, in those short-haul rates, you do know this, that the rates that are proposed here are really less than the rates under the Illinois scale?

A. I know that, yes. We are a party, of course, to the proposed rates from the short-haul origins to our destinations, but I didn't intend to testify concerning them.

Q. Well, what I had in mind particularly, the list of points from the Northern Illinois Group, you do not publish any of those rates, do you, the Milwaukee does not?

A. We publish some for account of connecting lines. The mines on connecting lines are shown in our tariff to our destinations. We actually publish the rates but we don't control them.

Q. Well, is it your thought that the increased or proposed [fol. 842] rates for those short hauls should be increased to the basis of the minimum rates prescribed by the Commission in 23130?

A. No, we don't propose anything different than we have already published and now under suspension. They should be increased the amounts that we have already published. We are not asking that they be made higher.

Q. Well, do you mean this, that in 23130 the short-haul rates were prescribed between particular points and these points here are different points and therefore the minimum finding in 23130 would not be applicable to the short-haul rates that are here exhibited?

A. That is correct. The rates prescribed in 23130 were between particular points which are not involved in these proceedings.

Mr. Vesey: In the interest of saving time, will the Examiner explore that to get the witness' several reasons why he is of that opinion; so that it may all be in the record at one point?

Exam. Trezise: Well, ask him.

Mr. Vesey: I mean if he is of that opinion which he just expressed to you, I would like to know the reasons which cause him to be of that opinion.

The Witness: I don't know that I expressed any opinion.

By Exam. Trezise:

Q. Well, I think Mr. Vesey wants to know whether you want to express yourself and give your opinion as to why the proposed short haul rates should be lower than the [fol. 843] minimum short haul rates prescribed by the Commission in 23130 in the same general territory. Perhaps you are not the witness to answer that, but if you can contribute something to our fund of information on that subject, we would appreciate it.

A. I didn't come prepared to discuss that feature.

Exam. Trezise: That is all right.

Mr. Cardy: Just one question.

Cross-examination (Continued).

By Mr. Cardy:

Q. Mr. Kuhls, there are a great many of the rates from the mines in Northern Illinois to adjacent territory that are substantially higher than 23130, are there not, and there are relatively few rates that are on a lower basis. I understood you to say that they were practically all lower than the 23130 scale. I just wanted you to qualify your answer. I didn't want to let that statement go unchallenged.

A. The average of the suspended rates as shown on Exhibit 14 is 81.2 per cent of the 23130 scale from Rushville.

Q. Well, that is only the twelve, fourteen typical points you have taken. Those are the lowest points you could find in the territory, isn't that true? If you will just say some

of them are higher and some of them are lower, I will be satisfied with your answer.

A. That is shown by Exhibit 14; some are higher and some are lower.

By Exam. Trezise:

Q. Could you be a little more specific and would you be [fol. 844] able to say that from the Northern Illinois Group, from the points that are named in the Northern Illinois territory there to the twelve destinations, out of that number there are seventeen, you know that there are seventeen of those rates that you propose are less than the rates under 23130?

A. Well, there are 72 rates that average less than 100 per cent and 12 that average over 100 per cent of the 23130 scale.

Q. My question that I asked probably was not as clear as it should have been. It should have been that out of 168 rates, that is figuring the rates from each one of these 14 points named in Northern Illinois to the 12 destinations, that would be 168 rates, 17 of them, I should have asked you if you knew that 17 of them were lower than——

A. No, when I made that answer I took the rates shown on Exhibit 14. There are 84 rates on Exhibit 14, 12 destinations and 6 origins, making a total of 72 rates; and from five of the origins or six of the origins the rates averaged less than 100 per cent and only the Atkinson rates averaged more than 100 per cent. Now, I haven't made a study of the 14 origins that you refer to so I couldn't answer your question.

Exam. Trezise: Do we have come further questions now of Mr. Kuhls?

Mr. Bather: Yes, I have some, Mr. Examiner.

Exam. Trezise: Mr. Bather.

By Mr. Bather:

Q. Mr. Kuhls, on pages 1 to 7 of your Exhibit 12, where [fol. 845] you show comparisons of rates from Fulton County and the Southern Illinois District to Iowa, is it your contention that the rates from Illinois, Indiana and West Kentucky to Rockford should be predicated upon the basis from Illinois to Iowa points?

A. No, that isn't our position and the rates that we have published are much lower than the level.

Q. What is the purpose of that part of your exhibit?

A. To show what the Commission has prescribed to adjoining territory.

Q. Do you consider Iowa adjoining territory in so far as the coal adjustment in Illinois is concerned?

A. Yes, I don't see much difference in the two territories.

Q. Are the transportation conditions and the volume of the traffic the same?

A. Oh, the volume of traffic to Iowa is much heavier than it is to Rockford, Northern Illinois.

Q. I am using Rockford as typical of the destination territory involved in this proceeding.

A. The movement to Iowa is much heavier than the entire destination territory.

Q. From what origin?

A. Illinois, Indiana.

Q. Can you give me approximately the volume of tonnage into Iowa as compared with the volume of tonnage into the [fol. 846] territory affected?

A. Exhibit No. 10 shows the movement of coal from Illinois to the State of Iowa for the years 1932 to 1941, but the only thing in the record that we have on the Illinois movement is to representative points shown in Exhibit 4, Section VIII; and of course the movement to Northern Illinois is heavier than just to those representative points; but from my knowledge of coal movement, the tonnage to Iowa is much greater than to Northern Illinois.

Q. How much greater?

A. I would say three or four times.

Q. How much?

A. Three or four times greater.

Q. Now, on page 11 of your exhibit you show comparison of the rates from the Springfield group to Rockford, compared with the Brazil-Clinton, Indiana group to Rockford, and when I say "Rockford" I mean Rockford and related points. Now, you voluntarily several years ago reduced your rate from the Brazil-Clinton District to Rockford 17 cents a ton?

A. That is right.

Q. Or from $1.97 to $1.80. Were you satisfied with that rate at that time?

A. It was reduced from $1.87 to $1.70.

Q. That is true.

A. And we were satisfied that we would have to publish [fol. 847] that rate to continue to haul coal to Rockford.

Q. You felt that that rate was compensatory for the service rendered?

A. Well, it was more than a compensatory rate but less than a reasonable maximum rate.

Q. It was more than a compensatory rate?

A. Yes, it was somewhat more than a compensatory rate, a minimum rate, but it was not a maximum rate.

Q. And you made the same reduction from the Linton-Sullivan Group as you made from the Brazil-Clinton Group to Rockford and Freeport?

A. No, we reduced Linton-Sullivan 12 cents. We increased the differential between Brazil-Clinton and Linton-Sullivan from 5 to 10, which meant a 17 cent reduction from Brazil and a 12 cent reduction from Linton.

Q. Now, as you go south from the Princeton group, is your rate the same from Enosville, for example, to Rockford as the rate via other lines serving Rockford?

A. No, our rate from Enosville is higher.

Q. Your rate is higher?

A. Than the rate of the Illinois Central, yes.

Q. So that where you have a lower rate from the Northern Indiana Groups to Rockford, you have a higher rate from the Southern Indiana Groups to Rockford?

A. That is right. It should be understood that the origin [fol. 848] you are talking about is on the Algers, Winslow & Western Railway and not on the standard Princeton lines.

Q. Well, from Oakland City, Indiana, doesn't the same situation apply?

A. No, Oakland City is on the so-called standard lines, and we have the same rate from Oakland City.

Q. Now, on page 13 of your exhibit, where you make comparisons of rates or ratings, rather, on various commodities, what is the purpose of that exhibit?

A. The purpose is to show the class rate level of commodities upon which the Commission prescribed commodity rates in lieu of class rates.

Q. How does the volume of tonnage of these commodities compare with the volume of tonnage of coal?

A. I couldn't say.

Q. Now, you show a comparison here which is more specific than anything else on the page on scrap iron where you have a basis of 12½ per cent of the first class rate on a minimum weight of 75,000 pounds; taking Herrin for example, where the first class rate would be 98 cents on a minimum car of 37½ tons, on which your revenue would be $90.00 as compared with the present revenue from Herrin to Rockford on a $2.10 rate on a 50 ton car of coal of $105. Do you think that is a fair comparison and do you think it justifies an increase in the rate on coal?

[fol. 849] A. You are taking the minimum on scrap iron and the maximum on coal.

Q. No, I am not. I am taking 50 tons; that is not a maximum at all.

A. Coal can be shipped in box cars at 25 tons and still take the same rates——

Q. To what extent is coal shipped in box cars in the State of Illinois?

A. Not to a very great extent.

Q. Is it shipped to Rockford in Box cars at all?

A. My attention hasn't been called to any movement.

Q. Do you know what the value of a carload of scrap iron is compared to the value of a carload of coal?

A. I think the OPA maximum price is about $18.50 a ton on scrap iron.

Q. What is it on coal, Illinois coal?

A. Depending on the size. It runs up to——

Q. Take the maximum. I don't care how high you go on it.

A. I don't know what the maximum is. $3.75, $4.00, something like that.

Q. At the mine?

A. Yes.

Q. So that you believe that comparison is a fair one in so far as the transportation cost of coal is concerned as compared with the transportation costs of a carload of scrap iron?

[fol. 850] A. No, but I stated when I offered this page that the commodities represented a cross section from a minimum to a maximum. You have to take the whole page rather than picking out one single point.

Q. As a matter of fact, the comparisons made with these other commodities would not have much bearing upon the reasonableness of the rate on coal, would it?

A. I think it shows comparative levels of commodities general with the coal rates here in issue. I think it has some use in this proceeding.

Q. Well, take Guano, for example. What is the extent of movement of Guano in the State of Illinois?

A. Probably none.

Q. Then on page 15 of your Exhibit 12, where you make a comparison with the first class rates for the rates on coal. Are the rates now or have they ever been, the rates on coal, now or have they ever been related in any way to the first class rate?

A. Not these rates, no.

Q. Have any rates on coal been related to the first class rates?

A. Yes, sheet 13 shows ground coal.

Q. Now, let's confine ourselves to steam coal, for example, not ground coal or processed coal. Let's take coal used for industrial purposes.

A. Ground coal is used in industrial purposes.

[fol. 851] Q. Well, I am talking about steam coal.

A. That is right.

Q. I am talking about steam coal, coal that is put under a boiler to generate steam. Is there any relation of the rates of that kind of coal to the first class rate?

A. I believe not.

Q. And there never has been, has there?

A. I don't think so.

Q. I believe you testified previously that the class rates are mileage rates?

A. That is right.

Q. And they were fixed by the Commission?

A. Yes, sir.

Q. And while the rates on coal generally, the territory involved in these proceedings, are group rates——

A. Yes.

Q. —they have no definite relation to mileage at all?

A. Well, they have some relation to mileage but they are not on the mileage basis.

Q. But they are not fixed with definition relation to the distance of the haul?

A. In Northern Illinois, no, they have never been fixed.

Q. Now, on sheet 18, where you show rates and rate comparisons within the State of Ohio, practically all of the rates shown are for short hauls, aren't they?

[fol. 852] A. There are a good many for short hauls and there are a good many for long hauls.

Q. In other words, your distance ranges from 11 miles up to 202 miles?

A. The one on sheet 19, 307.4.

Q. Sheet 18, I am speaking of.

A. Oh, sheet 18; pardon me. Yes, that is right.

Q. Do you think that is a fair comparison with the rates involved in these proceedings?

A. Oh, you have rates in these proceedings for 40 miles, 50 miles.

Q. You haven't got any, though, for 11-mile hauls, have you?

A. Well, there is only one rate here for 11 miles.

Q. Do you participate in the rate on coal from Wilmington to Rockford?

A. We do.

Q. That is a relatively short haul, isn't it?

A. It is a short haul but it is a group rate.

Q. It is in the Northern Illinois group?

A. Yes, sir.

Q. Now, on sheet 21, where you show a list of industries, Freeport, Rockford and other points, from what source did you get that information?

A. Personal investigation and reports from agents at the destinations.

[fol. 853] Q. How much coal does the Anderson Metal Products Company consume per year?

A. We didn't compare the tonnage.

Q. Or Nelson J. Bilstrom?

A. We didn't develop the amount of tonnage that any of these concerns consumed.

Q. As I understood your testimony, this information was obtained in February and March of this year?

A. That is right.

Q. Do you know that the West End Furniture Company has been out of business for three years?

A. No, I didn't know that.

Q. You show them in the list here, that is why I asked that question.

A. Well, the report I have includes the West End Furniture Company. It is dated February 27. I just assumed that they were still in existence.

Q. In other words, you have no personal knowledge of the industries listed here or where they obtain their coal?

A. Oh, yes, I see it on our so-called passing reports every day. It originates in Indiana.

Q. Did you check those against this list?

A. No.

Q. I also recall that you testified that you did not show public utilities in the list of industries receiving coal at these points?

[fol. 854] A. Yes, I thought I eliminated the utilities.

Q. Why did you do that?

A. Why, I didn't think they competed to the same extent that manufacturing industries did.

Q. Do you know how much coal the Central Electric & Gas Company received at Rockford for a year?

A. Several hundred thousand tons.

Q. And do you now where that coal comes from?

A. For the electric plant it comes from Rockford and for the gas plant it comes from West Virginia.

Q. Who handles that coal?

A. The Milwaukee Railroad.

Q. And what is the origin point of the Illinois coal that comes into Rockford for that company?

A. West Clinton.

Q. Do you know what the tonnage amounted to for the year 1942?

A. It was quite substantial; around 200,000 tons, I think.

Mr. Bather: That is all.

Exam. Trezise: Do we have further questions?

Mr. Wilkinson: Let me ask one right there:

By Mr. Wilkinson:

Q. West Clinton is an origin point on the Milwaukee road, in the Clinton District, isn't it?

A. Yes, sir.

By Mr. Binkley:

Q. Mr. Kuhls, you compared the volume of movement from Southern Illinois mines to Rockford area into Iowa. You were referring to the whole State of Iowa?

[fol. 855] A. Yes, in response to a question Mr. Bather asked which included the State of Iowa.

Q. The whole State of Iowa?

Mr. Bather: I asked that question because his exhibit showed the whole State of Iowa.

Mr. Binkley: That is all.

Mr. Stadell: I have a few questions.

Exam. Trezise: Mr. Stadell.

By Mr. Stadell:

Q. You were asked a number of questions, Mr. Kuhls, concerning the difference in the rates to Rockford and Freeport from mines on the Milwaukee as compared to the rates from mines on other railroads in that group to those destinations, and I would like to have you briefly review the history surrounding that rate reduction and the increased rates you are proposing here from Illinois mines. Am I correct that the reduction of 17 cents per ton which has been referred to at numerous points in this proceeding as having been made by the Illinois Commerce Commission and the rates from the Southern Illinois and certain other Illinois groups to Rockford was established in about 1930, 1931?

Mr. Bather: 1932.

By Mr. Stadell:

Q. 1932?

A. August 20, 1930.

Q. What year?

A. 1930.

[fol. 856] Q. 1930?

A. Yes, sir.

Q. That is when the reduced rate became effective from those Illinois groups to Rockford and Freeport?

A. Yes, sir.

Q. Now, following the establishment of those reduced rates in compliance with the order of the Illinois Commerce Commission, the railroads serving the Illinois-Indiana mines filed a thirteenth section petition with the Interstate Commerce Commission, and in conformity with the request in that petition, the Commission instituted a thirteenth section investigation concerning the rates, intrastate rates

from the Illinois mines to those Northern Illinois points to see if they could be increased back to their former level, because it was alleged that they violated Section 13 of the Act.

A. Yes, that was Docket 23130.

Q. And did or did not the Commission grant that petition and require the Illinois rates to be increased back to their former level?

A. They did not.

Q. And was the reason for that, reason for the refusal, as stated by them to be the fact that while these rates from the Illinois mines to Rockford and Freeport were on possibly a low level, that the railroads were voluntarily maintaining still lower rates interstate from the Indiana mines [fol. 857] to the same Northern Illinois destinations?

Mr. Wilkinson: I want to object to that question, Mr. Examiner. The question involves—is it a fact that the rates were so and so, or is that the fact that the Commission stated in its decision.

Exam. Trezise: Confine it, if you want to, did the Commission state that in the decision?

By Mr. Stadell:

Q. As a fact?

A. No, not in those words or terms. They did not say the rates from the Indiana mines. They referred to certain low rates from Indiana. Your question would assume that it referred to all the rates in Indiana, whereas the Commission referred to low rates in Indiana.

Q. Well, that was the reason the Commission refused to increase the rates from the Illinois mines under the 13th section petition, was because of the maintenance of those lower rates from Indiana, isn't that true?

Mr. Wilkinson: The Commission's decision speaks for itself.

Exam. Trezise: The Commission said that in its report, page 550, yes.

Mr. Stadell: What is the witness' answer?

The Witness: That is right: I thought I answered before.

Exam. Trezise: That doesn't make any difference, what is said about that. The Commission said that.

[fol. 858] Mr. Stadell: Well, he has testified about all the history of these things in answer to the alleged cross

examination of Mr. Wilkinson. I thought I might be able to get if clear here so I could lay the foundation for a group of questions.

By Mr. Stadell:

Q. Now, following that decision of the Commission, did the railroads increase the so-called lower rates from Indiana, or did they reduce some of them?

A. The Milwaukee railroad attempted to reduce their rates.

Q. They attempted to?

A. Yes.

Q. And the Interstate Commerce Commission suspended those rates and found them not justified, didn't they?

A. Yes, sir.

Q. And that case was appealed to the Supreme Court and the Supreme Court overturned the Commission's decision on the grounds that the Commission's order was not supported by any finding?

Mr. Wilkinson: I object to the witness giving the contents of the Supreme Court's decision. That decision will speak for itself.

Exam. Trezise: Let's assume that is true, yes.

By Mr. Stadell:

Q. You said they attempted to reduce the rates 17 cents per ton from the Milwaukee mines in the Brazil-Clinton and Linton-Sullivan District. They not only attempted to reduce them but they did do that and made them effective [fol. 859] from about 1934, didn't they?

A. Following the order, we attempted to do it and didn't succeed but lately.

Q. You did succeed?

A. From the Supreme Court decisions.

Q. And those reduced rates from the Brazil-Clinton and the Linton-Sullivan District to Rockford, Freeport and other Illinois territory are in effect today, are they not?

A. Yes, sir.

Q. And in this proceeding, the Milwaukee railroad is not proposing to restore that 17 cents reduction but they are merely proposing to increase those reduced rates 15 cents a ton, is that correct?

A. That is right.

Mr. Vesey: So I can follow this, that doesn't mean that their proposed rate is two cents lower than the 23130 rate at the time it was decided?

Mr. Stadell: Yes, that is right; from the Milwaukee mines, in the Brazil-Clinton Linton-Sullivan District.

By Mr. Stadell:

Q. Is that correct, Mr. Kuhls?

A. No.

Mr. Stadell: I see Mr. Scott shaking his *his* head. I think Mr. Kuhls can take care of himself.

Mr. Scott: I didn't mean that for Mr. Kuhls.

The Witness: Mr. Stadell, I said no to Mr. Vesey's ques-[fol. 860] tion because he referred to 23130 rates.

Mr. Stadell: Mr. Vesey, just to get the record straight——

By Mr. Vesey:

Q. What I mean, the rates were in effect at that particular time, at the time of that decision?

A. Yes.

Q. In other words, you went down 17; you are going back up 15, the way I add up. Maybe that is the wrong figures but it looked to me like there was two cents difference.

Mr. Cardy: It depends on which origin you are talking about.

Mr. Bather: In other words, what they did, they took 17 cents off the rate and they now want to put 15 cents back on.

Mr. Kaier: Would you say that was two cents difference?

Mr. Bather: I would.

Exam. Trezise: Go ahead.

Mr. Cardy: To get that straight——

Mr. Stadell: Suppose you cross examine the witness after I get through.

By Mr. Cardy:

Q. Mr. Kuhls, in the Brazil-Clinton District you reduced it 17 cents, from $1.97 to $1.80, isn't that true, 17 cents difference?

A. Mr. Cardy, we are treating Brazil-Clinton exactly the same way that Springfield, Illinois, was treated.

Q. I don't care about that, but from the Sullivan-Linton you have a rate of $3.02 and you reduced it to $1.90, ac-
[fol. 861] cording to this statement here, is that correct?

A. That is correct.

Mr. Cardy: All right.

By Mr. Stadell:

Q. Now, I understood, in answer to the questions that you made to Wilkinson and the Examiner, that you thought that there was no reason why the rates from all mines in the Brazil-Clinton group, Rockford and Freeport, or from all mines in the Linton-Sullivan group to those destinations should not be the same.

A. Yes, I said that.

Q. And today the rates from the Milwaukee mines to those destinations are 17 cents per ton lower than the rates from the mines on the other railroads in those two groups.

A. 17 and 12.

Q. 17 cents per ton lower from Brazil-Clinton and 12 cents per ton lower from Linton-Sullivan.

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Now, the Milwaukee having no objection to the parity of rates being established from all mines in those two groups to those destinations, how do you want the Commission to accomplish that? By reducing the rates from the mines on the other railroads or by increasing the rates from the Milwaukee mines?

A. Well, there isn't any particular way that I want them
[fol. 862] to do it, but, from the evidence on the record, it should seem to me they would have to accomplish it by reducing the higher rates instead of increasing the lower rates.

Q. You mean that the Milwaukee railroad have no objection to the Commission accomplishing that parity by increasing the present rates the additional 17 and 12 cents a ton from the Milwaukee mines to those destinations?

A. Will you repeat that, please?

Exam. Trezise: Read the question.

(Question read.)

The Witness: They couldn't do that under the record, no.

By Mr. Stadell:

Q. Why couldn't they?

A. Well, it shows that the mileage from Brazil-Clinton is less than it is from Springfield. How could they——

Q. You think that mileage is important? You think that should determine what the rate should be from these various groups?

A. I am beginning to think nothing is important.

Q. You said that because the mileage was the same that the rate should be the same. Is that the theory on which you think the Commission should proceed in this case?

A. That is one thing, the distance, and then the history of the adjustment. The conclusion is inescapable that the two groups should be on a parity.

By Exam. Trezise:

Q. When you say the two groups, you mean that the rates of the Milwaukee and the rates of the other carriers [fol. 863] should be the same from the Brazil-Clinton Group?

A. Should be the same as Springfield.

Q. All right; the same as Springfield. But there should be one rate from the Brazil-Clinton Group?

A. One rate from the Brazil-Clinton Group, and that should be the same as Springfield.

Mr. Hunter: Excuse me.

By Mr. Hunter:

Q. Mr. Kuhls, did I understand that you are comparing the Brazil-Clinton field and the Springfield group when you say the rates of the two groups should be on a parity?

A. That is right.

Mr. Hunter: I wasn't sure. Thank you.

By Mr. Stadell:

Q. And you think that the only way that could be accomplished here is by reducing the rates from the mines in the Brazil-Clinton and Linton-Sullivan on the other

railroads down to the basis in effect from the Milwaukee mines, is that correct?

A. We are not proposing that, Mr. Stadell.

Q. I know you are not proposing it, but you said, as I understood you, that is the only way the Commission could accomplish it here on the evidence in this record. I want to know if that is your answer.

A. If that was what the Commission decided to do, that would be the way to do it.

By Exam. Trezise:

Q. I think Mr. Stadell wants to know what guidance could [fol. 864] you give the Commission in their proceeding to handle the situation? Distance would be the paramount factor?

A. I mentioned two: distance and past history; and I presume there will be commercial testimony in the case which might justify that from a commercial standpoint. But as far as I am concerned, it would be distance and history; distance and history.

Q. What has been should be, is that what you mean? When you say "history", I am not sure that I know what you mean.

A. Well, we have a rate history here showing that there was a parity between Brazil-Clinton back to 1913. Prior to that time, Brazil-Clinton was lower than Springfield. That is the history. And the distance feature is that the average mileage from the Brazil-Clinton group is less than from Springfield.

Mr. Bather: To where?

By Exam. Trezise:

Q. Well, it is so trivial, though, that it is inconsequential, isn't it, to these destinations; only a few miles?

A. Well, being a few miles less, the rate shouldn't be 17 cents more.

Exam. Trezise: Go ahead, Mr. Stadell.

By Mr. Stadell:

Q. Now, will you answer my question as to whether the Milwaukee railroad, you being the coal traffic manager and I presume an executive having charge of the rates on coal from mines on the Milwaukee, would they have any ob-

[fol. 865] jection to the Commission accomplishing this parity which you said should exist from the Brazil-Clinton and Linton-Sullivan mines to Rockford and Freeport by in-reasing the rates from the mines on your line to those destinations rather than reducing the rates from the other railroads' mines in that district?

Mr. Hunter: I suggest he has answered that several times.

Mr. Stadell: I would like to have an answer to that.

The Witness: I said it should be done by reducing the higher rates.

By Mr. Stadell:

Q. You would object, then, to the Commission doing it by increasing the rates from the Milwaukee mines to those destinations?

A. Right.

Q. So what you are, in substance, proposing here is not an increase in the rates from the mines in the Brazil-Clinton and Linton-Sullivan Districts to Rockford, Freeport and most of the other points involved on railroads other than the Milwaukee, but a reduction, is that correct?

A. Reduction from certain mines.

Q. Well, it is a reduction in the present rates from all mines in those two groups on railroads other than the Milwaukee, is it not?

A. Yes, sir.

Q. Now, referring to your Exhibit No. 13, you show on there certain mileage scales, the Holmes-and Hallowell Scale, 23130 scale and the 23922 scale. Now, I under-[fol. 866] stood you to say that the 23130 scale was prescribed by the Interstate Commerce Commission for application in Illinois as a minimum scale.

A. Within a certain territory, yes, sir.

Q. They prescribed it as a minimum scale from Illinois mines to certain destinations in Illinois?

A. Yes, sir.

Q. And it is your view that any rates below that scale would be below a minimum reasonable basis?

A. No, not necessarily; at least they would not be above a reasonable maximum basis.

Q. Well, if it is a minimum scale and the rate was below that scale, why wouldn't it be below a reasonable minimum basis?

A. We have a different territory; longer hauls, on an average.

Q. Is it not a minimum scale?

A. I understood it was. It was prescribed in the 13th section case.

Q. For what distance was that scale prescribed?

A. 100 miles.

Q. And you had extended it up to what, 300 miles?

A. Yes, sir.

Q. On your Exhibit 13?

A. Yes, sir.

Q. And you feel that that would be proper to measure rates, for example, from Illinois groups for 300 miles?

[fol. 867] A. No, sir.

Q. Why did you extend it on your exhibit to 300 miles?

A. In my direct testimony I didn't mention it.

Q. Isn't your exhibit part of your presentation, your evidence?

A. It is in the record but I didn't make any comparison, the suspended rates with the 23130. I made the comparison between the suspended rates and the 23922 scale.

Q. Well, the 23922 scale is five cents per ton higher than the 23130 scale, is that it?

A. Yes, sir.

Q. And that five cents per ton difference is due to the fact that the mileages under the 23922 scale are figured over the shortest possible routes, and under the 23130 scale over the average of short tariff routes, is that correct?

Mr. Wilkinson: I object to that question.

The Witness: No.

Mr. Wilkinson: Just a minute. That is getting into the Commission's decisions again and interpreting those decisions.

Mr. Stadell: Here is a witness, Mr. Examiner, supposed to be an expert witness. He has put an exhibit in here showing certain mileage scales. Now, I presume that he knows something about it.

Exam. Trezise: He does.

Mr. Stadell: I hope I can get an answer to that question, then. As a matter of fact, I don't know what question you

[fol. 868] objected to. As a matter of fact, he testified about it in direct testimony and I think he testified about it in answer to some of Mr. Wilkinson's questions.

Mr. Wilkinson: The witness testified, Mr. Examiner, on his direct that the 23——

Mr. Stadell: I object to his stating what he testified to. I think the record will show what he testified to.

Exam. Trezise: Then let's settle it all by having the question asked here. Do you want to reframe it or——

Mr. Stadell: No, I think the question is clear. Let the reporter read the question.

Exam. Trezise: Let's go back and read Mr. Stadell's question.

(Previous question read.)

The Witness: I answered the question. I don't know whether she has it or not.

Exam. Trezise: Well, he answered and you objected after he answered it.

Mr. Wilkinson: No, I objected first and then he answered it. It doesn't make any difference.

Exam. Trezise: All right, let's pass on.

By Mr. Stadell:

Q. Your answer was no?

A. Yes, sir.

Q. Then I will ask you, then, if it isn't a fact that the Commission first prescribed the 23922 scale for application [fol. 869] to distances over the average of short tariff routes in 185 I. C. C.?

Mr. Cardy: Mr. Stadell, is that between specific points or generally as a scale?

Mr. Stadell: Generally as a scale.

The Witness: Mr. Stadell, if I may, I can shorten this up by repeating my direct testimony. I said that so far as the two scales were comparable in the distances prescribed by the Commission, the mileages were figured the same but over——

By Mr. Stadell:

Q. You mean up to 130 miles. Yes, all right.

A. But over 130 miles, I said that the Indiana scale, 23922, was figured via shortest routes.

Q. Shortest possible routes?

A. Shortest possible routes.

Q. All right, let's come back to my last question, now. I asked you if the Commission, the Interstate Commerce Commission did not, in its first decision in the 23922 case, prescribe the scale in that case for application to distances over the average of short tariff routes?

A. In the first decision, yes.

Q. And then they reopened the case and in 190 I. C. C. they prescribed the scale which you show on your exhibit and which is five cents per ton higher than the original scale to apply to distances computed over the shortest possible routes?

A. That is right.

[fol. 870] Q. And the reason for the five cent increase in the scale was due to the difference in the method of computing the distance?

A. That is also correct.

Q. And for distances up to 130 miles, which was the distance for which the 23130 scale was prescribed, the 23922 scale is five cents per ton higher than the 23130 scale, is that right?

A. Yes, sir.

Q. Now, you say that you do not think that the 23130 scale is proper to use in measuring the present or suspended rates from the Illinois mines to the Northern Illinois points involved in this case.

A. I said that because it isn't proper, in my opinion, to progress the scale that ends at 100 miles at the same rate of progression that is effected by the large mileage block, because if you extend it far enough, the rates become out of proportion to the other scales prescribed by the Commission.

Q. What significance are we or the Commission to attach to the scale as shown in your Exhibit 13, 23130 scale, for distances of more than 130 miles or beyond 130 miles?

A. Well, I would say, to be frank, none.

Q. It might just as well be stricken from the exhibit?

A. Over 130 miles, yes.

Q. Now, the 23922 scale being but five cents per ton higher than the 23130 scale and the 23130 scale being, as you said, a minimum scale, would you say that the 23922 scale was

[fol. 871] but five cents per ton higher than the minimum scale?

A. Yes, but I stated before we were talking about different territories, now, and longer hauls, and group rates.

Q. Well, your 23922 scale was prescribed for distances up to 300 miles, was it not?

A. Yes. We are not asking the Commission to approve rates based on 100 per cent of 23922. We merely show it to demonstrate the lowness of the suspended rates.

Q. Would you say that a rate more than five cents per ton lower than the 23922 scale would be below a minimum reasonable basis?

A. No, I don't think so. There is quite a spread between minimum and maximum reasonable rates and I would say it would be a reasonable rate, it could vary considerably and still be a reasonable rate.

Q. How much could it vary from the 23922 scale and still be a reasonable rate; 40 cents?

A. I haven't given any thought to that. I would want to give it a little study before I answered.

Q. Don't you think it is important in this case, where the railroads are proposing to increase rates and you are using these scales as yardsticks, don't you think the Commission ought to know what the differential might be?

A. Well, anywhere between 80.7 per cent and 88.6 per cent in Southern Illinois and between 78.9 per cent and [fol. 872] 103.1 per cent in Fulton County with related rates in the other groups.

Q. The average distance from the Brazil-Clinton District to Freeport is what, how many miles?

A. From the Linton District to Freeport?

Q. Yes, Brazil-Clinton.

A. The average from all mines from the group is 287 miles.

Q. And your present rate is $1.80. The distance for the $1.80 rate—the average from the group is 287?

A. Yes.

Q. And the present rate from the Milwaukee mines is $1.80?

A. But not that mileage.

Q. The present rate from the Milwaukee mines is $1.80?

A. Yes.

Q. For the distance of 287 miles?

A. Yes.

Q. And the proposed rate from the Milwaukee mines is $1.95?

A. Yes.

Q. You were, in substance, here, proposing $1.95 for the entire group?

A. No.

Q. That is what you were talking about a while ago.

A. No, we haven't proposed that.

Q. Well, the result of your proposal, the result of your testimony——

Mr. Hunter: I object to that. The record will speak for [fol. 873] itself.

Exam. Trezise: He is not advocating it; I mean he is not proposing it but he is advocating it.

Mr. Stadell: He is not objecting to it; that is the point.

Mr. Kaier: I haven't heard him advocate it either, Mr. Examiner. I suppose he would be glad to have things remain as they are.

By Exam. Trezise:

Q. Well, Mr. Kuhls, didn't you say that you thought the rate should be the same from all the points in the Brazil-Clinton Group to, well, we will say to Freeport or Rockford? Didn't you say that? If you didn't, just say you didn't.

A. I said I didn't want to suggest to the Commision what they should do, but I thought they were capable of dealing with the situation themselves.

Q. Well, it is your mature and experienced judgment that there should be the same rate from all points in the Brazil-Clinton Group to Freeport and Rockford and those points, is that true?

A. Yes, in view of the mileage, I don't see why there shouldn't be; but I am not proposing it or advocating it.

Exam. Trezise: Neither proposing or advocating it, but you think it should be. All right. Have you that now, Mr. Stadell?

Mr. Stadell: Part of it.

By Mr. Stadell:

Q. Well, if the Commission adopts your benevolent atti- [fol. 874] tude of neutrality and makes the rate $1.95 per ton

from all mines in the Brazil-Clinton District to Freeport, that rate will apply for the average distance of 287 miles, will it not?

A. Yes, sir.

Q. Now, what rate would the 23922 scale produce for that distance?

A. It would produce $2.30.

Q. And the 23922 scale as extended, on your Exhibit No. 13, for the 287 miles, would produce a rate from Brazil-Clinton to Freeport of $2.70, would it not?

A. What scale, please?

Q. 23130?

A. No, I have disowned that 23130.

Q. You disowned it?

A. We are not using it beyond 130 miles.

Q. It is in your exhibit and I just asked you——

Mr. Hunter: I object to that. He said he disowned it, at Mr. Stadell's request.

Mr. Stadell: No, not at my request. I merely asked him a question.

Mr. Hunter: I think we shouldn't go into that. If he is not advocating the use of this scale, I don't see any point in wasting time on it, because we want to get through here some time.

[fol. 875] Mr. Stadell: We want to get through but you don't want it.

Mr. Hunter: In other words, if we don't rely on it, I don't see the point of going into it. It is entirely irrelevant.

Mr. Stadell: It is very confusing to me, Mr. Examiner, if it is irrelevant, why Mr. Kuhls put it in an exhibit.

Mr. Hunter: He has explained——

Exam. Trezise: All right, Mr. Stadell, keep on asking him why he put it in his exhibit. Go ahead.

Mr. Hunter: He has already explained it.

Exam. Trezise: Have you any further questions on that line?

Mr. Stadell: Yes.

Exam. Trezise: Go right ahead.

By Mr. Stadell:

Q. The rate for 287 miles under the 23130 scale would be $2.70, would it not?

A. No, sir.

Q. As shown on your Exhibit No. 13?

A. That is not a scale.

Q. Well, you show it on your exhibit as a scale, do you not?

Mr. Hunter: I object to his arguing with the witness.

The Witness: No, I show the scale as progressed under 100 miles.

By Mr. Stadell:

Q. As progressed under your exhibit, the rate would be [fol. 876] $2.70 for 290 miles, would it not?

A. No, the scale is non-existent.

Q. Would you say that the rate, the proposed rate from the Brazil-Clinton District to Freeport of $1.95 would be a reasonable and profitable rate, although it is 35 cents per ton lower than the rate that would be produced for that distance by the 23922 scale?

A. Freeport?

Q. Yes. You said the distance was 287 miles, the proposed rate $1.95 and the 23922 scale for that distance would produce a rate of $2.30 or 35 cents per ton higher.

A. Yes. I believe it would be reasonable, in lieu of the——

Q. And proper?

A. And proper, in lieu of the rates proposed from other groups.

Q. Now, in answer to Mr. Wilkinson's questions you stated that where the distance from Brazil-Clinton to the destinations involved were substantially the same as from Springfield, that the rate should be the same?

A. Yes, I thought so.

Q. But where you got to a point like Dixon, where the distance from Springfield was shorter than from Brazil-Clinton, that the Springfield Group should be given the benefit of its geographical location and have a lower rate?

A. No, I said the whole territory should be treated as a whole and that we were supporting the proposal as to the [fol. 877] whole territory. If Springfield is given more favorable treatment at Dixon, why, we think that Indiana should be given more favorable treatment at Belvidere, for example; but we are not proposing that. That all was in

answer to Mr. Wilkinson's question, but that is my testimony.

Q. Now, are you supporting, is the Milwaukee railroad supporting the rates under suspension here, or are you advocating something different?

A. No, I said there were a few inconsistencies, such as the higher rate from Brazil-Clinton to Belvidere than from a shorter distance from Springfield, but we are willing to go along with the entire proposal.

Q. Do I understand by that, then, that the Milwaukee railroad feels that to Belvidere the rate, that the Commission should change the rate from Brazil-Clinton and make it the same as from Springfield?

A. No, sir.

Q. The Milwaukee railroad is satisfied with the proposed rate in there of $1.95 from Springfield and $2.12 from Brazil-Clinton?

A. No, we are not satisfied.

Q. Are you contented?

A. We are willing to go along with the proposal as made.

Q. Well, you are not advocating any change in those rates, then, at Belvidere or the relationship between Springfield and Brazil-Clinton in this proceeding?

[fol. 878] A. No, as proposed; but if the Commission decides to treat those rates and places Indiana at a disadvantage at Dixon, for example, we will expect them to make the same kind of a revision at Belvidere.

Q. Now, what do you mean by disadvantage at Dixon?

A. As measured by the proposed rates.

Q. Do you feel that the proposed rates from Springfield and Brazil-Clinton to Dixon are proper?

A. For the purpose of this adjustment, yes.

Q. You are not advocating any change in the rates from those groups to Dixon?

A. No, sir.

Q. Do you know of any reason why a Brazil-Clinton Group should have the same rate to Dixon as the Springfield group, where the Brazil-Clinton mileage is 74½ miles greater?

A. You are talking about Dixon?

Q. Yes.

A. Springfield——

Q. Shown on page 11 of your Exhibit No. 12.

A. Springfield is $1.75 and Brazil-Clinton is $1.89; not the same. Brazil-Clinton is 14 cents higher.

Q. You know of no reason why that difference in rate for that difference in distance isn't proper, do you?

A. I don't see much wrong with it. The only way you could condemn it would be by putting all rates on a strict [fol. 879] mileage scale, and I don't think anyone advocates that.

Q. That would probably result in greater differences in favor of Springfield, wouldn't it?

A. It would also result in this continued litigation over coal rates, too.

Exam. Trezise: Is that all, Mr. Stadell?

Mr. Stadell: No, I have a few more questions.

By Mr. Stadell:

Q. Now, suppose the Commission should conclude that the rate from all the Brazil-Clinton mines and all the Linton-Sullivan mines on the various railroads to Rockford and Freeport should be the same as from Milwaukee mines. You stated that would result in a reduction in the present rates from the mines on the other railroads to those destinations, didn't you?

A. Yes; the present existing rates but not the relationship. It has been in effect for a great many years.

Q. It would result in a reduction of the present relationship of 17 cents a ton, wouldn't it?

A. The present rates don't reflect a relationship. The relationship was disrupted in 1930.

Q. Now, assume the Commission reduced those rates from the mines on the other railroads in the Brazil-Clinton Linton-Sullivan Districts to those destinations and put them on the Milwaukee basis. Would that, in your opinion, necessitate reductions in the rates from the Princeton and [fol. 880] Booneville district?

A. Not necessarily, no.

Q. You say it wouldn't necessarily result in reduction?

A. I did, yes.

Q. What would be the reasons why you wouldn't think that that would happen?

A. Well, it all depends on the facts and evidence that we put in the record for or against it.

Q. Well, would the Milwaukee railroad have any objection to those rates being reduced by the same amount as the rates from the mines in the Brazil-Clinton Linton-Sullivan Groups on the other railroads?

A. Well, we wouldn't object to the extent that you would want to protest it.

Mr. Cardy: What was that answer?

(Answer read.)

By Mr. Stadell:

Q. You mean you would present no active opposition to it?

A. That would be through Interstate Commerce Commission action and if they felt that was the thing to do, I don't know why we would interpose much objection to it.

Q. Now, have you Robertson's Exhibit No. 4?

A. I have.

Q. Will you turn to page 12 of Section III. If the rate [fol. 881] from the Princeton district, for example, to Rockford were reduced as I have outlined, what would the rate be?

A. $2.12.

Q. $2.12. And that would be for what average distance?

A. 296.5 miles.

Q. From the Princeton district?

A. Oh, pardon me.

Q. Princeton. 363.5, would it not?

A. Yes, 363.5 miles.

Q. Now, what would the proposed rate from Southern Illinois be?

A. $2.25.

Q. And what is the average distance from that group to Rockford?

A. 369.2.

Q. Now, do you know of any conditions, transportation or otherwise, that would justify a rate of $2.25 from the Southern Illinois Group to Rockford for 369 miles and a rate of $2.12 from the Princeton group for 363.5 miles?

A. Well, rates aren't made on distance. You said transportation and otherwise.

Q. Well, all right.

Mr. Hunter: If the Examiner please, I wish to object to this question because it doesn't bear upon any rate that is at issue in this particular proceeding.

Mr. Stadell: Oh, yes, it does.

Mr. Hunter: The rate proposed is $2.24 and he is asking [fol. 882] about a hypothetical rate of $2.12 which I don't think would help the Commission in any way.

Mr. Stadell: If the Examiner please, I can ask a hypothetical question if I want to, in the first place; and in the second place, I think that the question is absolutely relevant and pertinent, in view of Mr. Kuhls' position in this proceeding as disclosed by his direct testimony and the answers to the questions propounded by Mr. Wilkinson.

Mr. Hunter: If it is material, I have no objection.

Mr. Stadell: It is material.

Mr. Hunter: But I didn't see it.

Exam. Trezise: You asked him what relationship should exist between Southern Illinois——

Mr. Stadell: No, I am not asking what relationship. I am asking him what conditions, of his own knowledge, now, what conditions, whether they be transportation conditions or other conditions that would justify the Interstate Commerce Commission in prescribing under the 13th Section petition in this proceeding a rate of $2.25 per ton from the Southern Illinois Group to Rockford for 369 miles and a rate 13 cents per ton lower from the Princeton group for 6 miles less.

Mr. Hunter: The reason I objected, that isn't before the Commission. Any such proposal is not involved.

Exam. Trezise: That is a hypothetical question.

Mr. Hunter: I see.

[fol. 883] Exam. Trezise: I don't know just what it has to do with it.

Mr. Hunter: I don't either, but if the Examiner——

Exam. Trezise: But it is hypothetical. It isn't a fact here. That is, it is not the evidence, on the face of it.

Mr. Stadell: If you will read the decision of the Commission in 4368 you will see it is very relevant.

Exam. Trezise: Give Mr. Stadell your answer to that, Mr. Kuhls.

By Mr. Stadell:

Q. I want this restricted to conditions that you know of, of your own knowledge.

A. Well, one is the fact that rates are not based on mileage, strict mileage formula. And then there is a market history and marketability of the coal, the two coals, and the quality of the two coals produced in Princeton and Southern Illinois. If those were taken into consideration, the Commission might find sufficient reason for approving the presently suspended rates from Southern Illinois and your hypothetical rate from Princeton.

By Exam. Trezise:

Q. It wasn't because you knew of physical transportation conditions that would be different from the two respective groups to this destination? It wasn't that reason?

A. I don't think there is any difference. I don't know of my own knowledge, but I don't think the transportation [fol. 884] conditions are any different.

By Mr. Stadell:

Q. Well, you say rates are not based on mileage. Now, do you know of any reason why, if they differ in distance from those two groups, the rates should not be the same?

A. No, strictly on that basis, they might be the same.

Q. You have referred several times to the history of the adjustment. Do you mean by that to say that even though a rate adjustment is wrong that the mere fact that it has been in effect for several years makes it legal?

A. Well, no, not——

Mr. Wilkinson: Isn't that beyond the scope of the witness' qualifications, Mr. Examiner, as to the legality of the rate?

Mr. Stadell: That is all his testimony has been here, is legality of rates.

Mr. Cardy: Anything that is wrong is wrong.

Mr. Hunter: I object to that. Of course, the answer is obvious, unless there is some hidden reason in Mr. Stadell's words.

By Mr. Stadell:

Q. Would you say the facts, standing alone, that a certain relationship in rates has existed for several years would indicate that the adjustment was lawful and should be perpetuated?

A. Well, there are certain elements——

[fol. 885] Mr. Cardy: I object to that. That is a question of law.

Exam. Trezise: Both those were questions of law. A legal rate is a rate that is named in the tariff, the Commission says. A lawful rate is a rate that the Commission has determined to be lawful. Now, which one of those do you want him to give?

Mr. Stadell: If he is not going to be permitted to answer the question, I move to strike out his testimony, all the testimony he has given bearing on the question of the history of these rates and the fact that because a certain adjustment has been in effect for several years makes it legal.

Exam. Trezise: He will be permitted to answer the question if you will ask the question in a way that he should be permitted to answer it and leave out the legal and the lawful proposition.

Mr. Stadell: All right.

By Mr. Stadell:

Q. Do you mean to say, Mr. Kuhls, that merely because there has been a certain difference between the rates from two groups for several years that that difference should not be disturbed, even though the mileages might justify, as you said, the same rates?

Mr. Cardy: That is merely a question of law. I object to it because the conclusion comes in there as to what the facts are; if something remains in effect for a period of years it becomes lawful, even though, in the first instance, it might be unlawful.

[fol. 886] Exam. Trezise: I think the witness has an answer to that that can be given, and that whether or not the history of the rate would have a tendency to support the continuance and propriety of that rate he may state from his standpoint, from his opinion, not from the legal standpoint or the lawful standpoint.

A. I don't believe that such a relationship would be firmly fixed and not subject to revision if proved to be wrong.

By Exam. Trezise:

Q. Well, would you say the fact that a rate has been in effect for a long time, there has been some reason for it?

A. I understand there are several reasons for this rate relationship but I am not qualified to go into that.

Q. From the standpoint of cause and effect?

A. Yes, you might say so.

By Mr. Stadell:

Q. You also mentioned the marketability of the coal and the quality of the coals. You said something about the principal coal being of a poor quality. Do you feel competent to testify on those two elements? If you do, I have some questions I want to ask.

A. I don't have the data with me.

Q. Do you feel competent to testify on those two?

A. No, I receive all reports of the Bituminous Coal Division and an analysis and I can read those as well as anybody can.

Q. Do you think that makes you an expert?

[fol. 887] A. Oh, no.

Q. On the marketability of coal?

A. No.

By Exam. Trezise:

Q. You reached your conclusion from what you read there, is that it?

A. Yes.

By Mr. Stadell:

Q. That is all your conclusion is based on is what you read from some report you got from the Bituminous Coal Division on those two elements?

A. Yes.

Mr. Stadell: I move to strike out the witness' testimony, his answers to my questions concerning the marketability of the Princeton coals and the alleged difference in the quality of the Princeton and the Southern Illinois coals.

Mr. Kaier: We have no objection to the whole cross examination being stricken, Mr. Examiner.

Mr. Stadell: Well, if you agree to strike all of your direct testimony, I will join in it.

Exam. Trezise: Well, as the Examiner recalls his testimony right now, I think that we will have to rule to let Mr. Kuhls' testimony as he gave it stand.

Any further questions, Mr. Stadell?

Mr. Stadell: No.

Exam. Trezise: We will take a few minutes' recess.

(Recess taken.)

[fol. 888] Exam. Trezise: Well, gentlemen, when you are ready, let us continue. Do we have some further questions of Mr. Kuhls?

Mr. Stadell: I have some more.

Exam. Trezise: Proceed.

By Mr. Stadell:

Q. You say that the differences in the quality of the coal produced in various groups should be taken into consideration by the Commission in adjusting the rates in this case?

A. I think so, to some extent.

Q. To what extent?

A. Well, the Commission has taken into consideration other factors in transportation, in some of their decisions, and as, for example, your last Western Kentucky case involving rates to Chicago, and it seems that they could go outside the scope of strict transportation, to some extent, in this proceeding.

Q. Do you agree with the decision of the Commission in that case?

A. Not entirely.

Exam. Trezise: Well, I don't know whether that is important.

By Mr. Stadell:

Q. Let me ask you this: Is it your position and the position of the Milwaukee railroad that where the distance from two groups to one of the Northern Illinois points, we will say, is the same, that if it should be shown that the coal produced in one group is of a slightly inferior quality to that produced in another group, that the Commission should [fols. 889-890] put in a lower rate from the mines in that group than from the mines in the group producing the slightly superior coal, for that difference in quality alone?

. . . . . .

[fol. 891] A. That it might be one of the factors to be taken into consideration.

Q. Well, would you say that where the distance was the same from the two groups, that the Commission would be justified and you wouldn't object to their prescribing a lower rate from one of the groups than from the other to the same destination, solely because the mines in one of the groups happened to produce a little inferior quality of coal to that produced in the other group?

Mr. Wilkinson: Mr. Examiner, I want to object to that line of evidence. What the Commission should do or should not do under the law is one thing——

Exam. Trezise: That is one thing.

Mr. Wilkinson: And the witness can't express any opinion on that. The witness could express an opinion as to whether the railroad takes that into consideration in making rates within the zone of a reasonable minimum rate and a reasonable maximum rate.

Exam. Treazise: I agree with you, Mr. Wilkinson, on that.

Mr. Stadell, have you your answer? If you haven't your answer, you can proceed to get it as to what he thinks, in his opinion, as an expert of the railroad in fixing rates and appraising them in any way, what they should do and what he thinks that the railroad should do and what he thinks should be proper in the canons of rate-making from the [fol. 892] railroads' standpoint.

By Mr. Stadell:

Q. Did you testify approximately a month ago in certain coal rate cases before an Examiner of the Interstate Commerce Commission in Denver, Colorado?

A. I did.

Q. Did you there testify that it was your opinion that the Commission should not take into consideration the differences in the quality of coal produced in various groups in prescribing the rates from those groups?

A. In answer to a question on cross examination I said that rates were not generally made on basis of the quality of the coals. I think that was my answer.

Q. Well, wasn't your answer that the Commission should not take that into consideration in passing upon the lawfulness of rates on coal?

A. I think in that case we had involved semi anthracite versus bituminous.

Q. Well, the question asked you was concerning the bituminous coal from Routt County, Colorado, and bituminous coal from mines in Wyoming, was it not, and your answer was that the difference in the quality of the coal produced by those mines should not be taken into consideration by the Commission in passing upon the lawfulness of the rates involved from those districts. That was your testimony. You remember it, don't you?

[fol. 893] A. I was just trying to recall whether I put it in those words, that the Commission shouldn't take it into consideration. I can't stop the Commission from considering anything they want to consider.

By Exam. Trezise:

Q. The question was what you did or didn't testify?

A. I don't recall those were my exact words.

By Mr. Stadell:

Q. Well, whatever you testified to on that point in that case, that was your position at that time?

A. It wasn't testimony, Mr. Stadell, otherwise I would have remembered it. I think it was in answer to some question on cross examination.

Q. Don't you consider your cross examination testimony? Well, whatever you testified to in answer to the question on that point, was your position or the position of the Milwaukee railroad at that time, and that was about a month ago, is that correct?

A. If that is what I stated, yes.

Q. Well, did you or did you not state here that it was your position the Commission should take into consideration the difference in the quality of the coal? You said it was your position, didn't you?

A. No, I said it was one of the factors that might be taken into consideration. It isn't our position it should or shouldn't.

Q. It doesn't make any difference to you whether they do [fol. 894] or don't, for the Milwaukee railroad, whether they reduce the rates on account of the difference in the quality of the coal or not?

A. I have no proposition to offer.

Q. You have no position on that at all in this case?

A. Not to the extent of proposing it to the Commission.

Q. Would you object if the Commission took it into consideration?

A. No, I wouldn't object.

Q. Now, if the Commission takes into consideration the commercial desirability of mines in one group versus mines in another group as reflected by an inferior quality of coal, wouldn't you say that they also should take into consideration the differences in the costs of production in those two mines as affecting the ability of the mines to compete in those groups?

A. Well, they should consider everything that is offered in the record.

Q. If they consider one of the commercial elements they should consider the other?

A. I think so.

Q. All right. I would like to ask you a few questions about the rates or the rate statements contained in your Exhibit No. 12. On pages 4 to 7, inclusive, on Exhibit No. 12, you show the average short tariff route and shortest tariff route mileages from the Fulton County and Southern Illinois [fols. 895-911] groups to destinations in Iowa, the differences in distance between those groups and the differentials prescribed by the Commission in the Midland case for those differences in distance. Are you offering this for the purpose of showing, based upon those differentials, what the differential should be between those groups to the Northern Illinois territory involved? Is that the purpose of that presentation?

A. No, it is to show the level of the rates prescribed by the Commission from the two largest producing districts in Illinois to destinations in Iowa.

Q. To show the levels of the rates and to use these levels in justification of the levels that you are proposing here from Illinois and Indiana to Northern Illinois?

A. Yes, the levels that they prescribed to Iowa in my opinion certainly justify the level that we are proposing to Illinois.

Q. Now, I notice that your counsel, in qualifying you, was very careful to have you state that you knew nothing about transportation conditions, and I assume that you know nothing about the comparative transportation conditions from the Illinois mines to Northern Illinois and from those

mines to these destinations in Iowa. Am I correct in that assumption?

A. Well, I have seen them out of traffic density studies and heard a lot of operating testimony. I said I made no actual study myself but I had a general idea from what I have seen and heard.

* * * * * * *

[fol. 912] W. H. KUHLS, resumed.

Cross-examination (Continued).

By Mr. Stadell:

Q. In a question that Mr. Wilkinson asked you, he referred to certain mines on the Milwaukee Railroad which are located south of the Linton-Sullivan Group and some which he stated that the rates were 7 cents a ton over the Linton-Sullivan Group. How many mines are there located on the Milwaukee there? Can you tell us what the names of those mines are?

A. There are no mines located on the Milwaukee in that section from which we carry rates 7 cents higher than Linton.

Q. You say there are no mines?

A. No, sir, on the Milwaukee Railroad.

Q. Well, what railroad are they on?

A. They are not on any railroad.

Q. Well, what are they, wagon mines, truck mines?

A. Yes, sir, wagon mines.

Q. Do they truck coal over to the Milwaukee Railroad to load it into cars on the Milwaukee?

A. Over a ramp, yes.

Q. And that ramp was constructed by the Milwaukee Railroad?

[fol. 913] A. No, sir.

Q. It was constructed by whom?

A. By the operator of the mine.

Q. How far are the mines located from that ramp, approximately?

A. From one to four miles.

Q. How many mines are there?

A. At the present time I think there is only one.

Q. Just one?

A. That is loading, yes, sir.

Q. Are there more that have been loading in the past?

A. Well, prior to the shortage of labor there were two or three.

Q. Could you tell us the approximate annual production of those mines?

A. Very small. I don't have the breakdown of the individual mines, but as I understand it, it has been very small.

Q. Are they located approximately half way between the Linton-Sullivan and Princeton Groups?

A. Well, taking average mileages from the group to Rockford, for example, if these mines were included in the Linton Group, they would increase the average distance from the Linton Group 12.1 miles, as compared with the average distance Princeton over the Linton Group of 74.7 miles. In other words, they would increase the average from the Linton Group about 1/6th of the average distance between the Princeton and the Linton Groups.

Exam. Trezise: Now, you said these mines—Now, do you [fol. 914] mean that? You said that there was a ramp running from the mines three or four miles, and the distance from what—the distance from a point on the Milwaukee Railroad into which this ramp runs? Is that what you figured the distance from, or the mines?

A. The origin points named in the tariff at which the coal is loaded.

By Mr. Stadell:

Q. Well, the origin points named in the tariff at which the coal is loaded is the location of the ramp, isn't that right?

A. That is right.

Exam. Trezise: That is the end of it in connection with the Milwaukee.

By Mr. Stadell:

Q. The ramp is on the Milwaukee, is it not?

A. That is right.

Q. And the mines are located approximately over the highway one to three miles from the ramp?

A. Yes, sir.

Q. The distance you gave, did that include the highway distance?

A. No, that is figured from the railroad origin point.

Q. From the ramp. So that they are closer to the Linton-Sullivan Group than they are to the Princeton Group?

A. Yes, much closer.

Q. And it would be more logical to include them with the Linton-Sullivan Group than with the Princeton Group, if [fol. 915] they were included in any group?

A. Yes, if they were included in the Princeton Group, these origins would materially reduce the average from the Linton Group.

Q. Do you know whether those mines ship any coal to the destination territory involved here?

A. I haven't any knowledge of any. I think Chicago is the farthest destination to which any coal from these mines has been shipped.

Q. Could you give us the names of those mines for the record?

A. I don't have them here.

Q. Will you furnish them for the record, the name of the producing company and the name of the mine?

Exam. Trezise: Do you want the names of the mines or do you want the names of the points where the coal is loaded on the railroad?

Mr. Stadell: I would like to have all three, the names of the producing company, the name of the mines, if there is a name, or number, and the tariff origin point on the Milwaukee at which the ramp is located. I think the record ought to have that information.

The Witness: I think the reports of the Bituminous coal division show the name of the mine and the operator and the license number.

Mr. Stadell: Will you furnish that information that I [fol. 916] have requested for the record?

The Witness: Yes, I can.

By Mr. Stadell:

Q. Now, you referred to the differential to the points involved here between the Linton-Sullivan and the Brazil-Clinton Districts being 5 cents per ton in some cases and 10 cents per ton in other cases, and you pointed out the

average distance was 38.4 miles, and stated either one of those differentials for that distance would be proper, is that correct?

A. I stated they could be found proper in view of what the Commission did in 26558.

Q. Which of those differentials in your opinion is proper?

A. I stated I would prefer the 10 cents differential.

Q. That is the differential that applies generally between those groups, is it not, to destinations in other territory?

A. Yes, that is correct.

Q. And you felt that that differential was justified by what the Commission prescribed between the Illinois group in the Midland case?

A. No. I said either the 5 or 10 could be justified.

Q. By what they prescribed in that case?

A. Yes, sir.

Q. Now, going back to the decision of the Commission in the first Illinois 13th Section case, Docket 23130, do you recall that the Commission made a finding in that case to the effect that the transportation conditions from the Illi-
[fol. 917] nois mines to Northern Illinois were substantially the same as from the Indiana mines to Northern Illinois?

A. I recall that, yes.

Q. To your knowledge, has there been any change in those transportation conditions since that time?

A. None that I know of.

Q. Since the decision in that case?

A. No, I don't know of any.

Q. You stated that following the decision of the Commission in that case that the rates from mines on the Milwaukee in the Brazil-Clinton and Linton-Sullivan Group to Rockford, Freeport, and certain intermediate points, was reduced 17 cents per ton, that is from Brazil-Clinton and 12 cents per ton from Linton-Sullivan.

A. Yes, sir.

Q. And those reductions became effective when?

A. April 23, 1934.

Q. So that from the standpoint of history they have been in effect, that adjustment has been in effect for nine years, has it not?

A. In effect for forty years, with the exception——

Q. I am talking about now the adjustment that prevails today, under which the rates from the Milwaukee mines in

the Brazil-Clinton Group to Rockford on the Milwaukee Railroad are 17 cents per ton lower than from other mines in that group?

[fol. 918] A. Putting it that way, yes.

Q. The same would be true with respect to split rates from mines in the Linton-Sullivan Group to Rockford, Freeport, and these other points?

A. Yes, sir.

Q. Did the Indiana producers actively participate in support of that adjustment when it was proposed and before the Interstate Commerce Commission?

A. They did.

Q. They have filed no complaint since that time to have it changed, have they?

A. No, sir.

Q. Will you refer to your Exhibit No. 12, please, page 13. On that page you show the basis of rates which was said to have been prescribed by the Commission in certain cases indicated on certain commodities and what percentage the prescribed basis of rates was of the first class rate. Have you made any investigation to determine the average loading of any of these commodities?

A. I have not.

Q. Have you made any investigation to determine the transportation conditions surrounding the movement of these commodities in the territories where these rates were prescribed to apply?

A. I would like to change my answer on the previous question. Line 1 is coke. I, of course, know the average loading of coke.

Q. What is it, about 35 tons per car?

[fol. 919] A. It is running a little heavier than that because of the use of special equipment, open top box and stock cars. We have a movement to California from Terre Haute and that averages 42, 43 tons.

Q. But generally and in normal times the average loading is not in excess of 35 tons per car?

A. That is about right, 35 tons. Now, I haven't answered your last question. I haven't made any investigation as to the transportation conditions, I think you said.

Q. Yes, have you made any study as to the volume of the movement of these commodities?

A. No, sir.

Q. Now, take line 30, clay flue lining, 17½ per cent of first class. Page 13 of Exhibit 12 indicates that the basis of rates was prescribed in 37 ICC 114. That case was decided about 1915, wasn't it?

A. I would say so, from the citation.

Q. Do you know whether that basis of rates is in effect today on clay flue lining anywhere?

A. Not to my knowledge, I don't.

Q. Now, take lines 2, 3, 4, 5, 6, 7, 8, 12, 16, 17, 18, 19, 27, 28, 29, and then over on the next section of page 13 of Exhibit 12, you don't show any line numbers, but you show the commodity, and all the way down that section of the exhibit it is indicated that the rates or the basis of rates indi- [fol. 920] cated on all those commodities was prescribed by the Commission in volume 123 at page 203. That was the Consolidated Southwestern Class Rates Cases, wasn't it?

A. I think so.

Q. And which was decided about 1927?

A. I think so.

Q. The basis of rates prescribed in that case was to apply in Louisiana, Arkansas, Texas, and Southwestern states generally?

A. I am not entirely sure, but I will take your word for it.

Q. Do you know whether the basis of rates indicated on page 13 of Exhibit 12 as having been prescribed on those commodities in that decision are in effect today?

A. No, but we will have a subsequent witness that can answer those questions. He is familiar with these general adjustments.

Q. Will you refer, please, to page 16 of Exhibit 12. You show in there the rate on Bituminous coal from the Inner Crescent Group to 12 of the suspended destinations in Northern Illinois, and the first class rate in cents per ton from Ferndale, West Virginia, one of the origins in the Inner Crescent Group. Now, the Inner Crescent Group covers a vast area, does it not, in the states of West Virginia, Virginia, Eastern Kentucky, and Tennessee?

A. Yes, I think that is about the extent of it.

Q. And there are thousands of origin points within that group, are there not, from which class rates are published [fol. 921] and from which coal rates are published?

A. That is right.

Q. And you selected one out of several thousand to show what the first class rate was?

A. Well, I didn't take the nearest point and I didn't take the farthest one. I took one that I thought was representative.

Q. Well, take Tennessee, for example, which is included within that group. Aren't the rates from Tennessee to Northern Illinois points on a higher level than from points in Pennsylvania, the class rate?

A. I think they are from Tennessee, yes.

Q. So that if you had taken the class rate from Tennessee you would have had an entirely different picture in Exhibit 12?

A. Yes, and had I taken one nearby point in Pennsylvania, I would have a different picture too.

Q. Now, as contrasted with the vast area covered by the Inner Crescent Group, the individual Illinois and Indiana Groups are relatively small in size, are they not, and contain comparatively few origin points?

A. Well, the so-called Inner Crescent Group consists of several groups and the aggregate of the Inner Crescent is larger than any of the Illinois or Indiana Groups.

Q. In other words, you have but approximately, as I recall the record here, thirty origin points in the Fulton-Peoria Group, Fulton County Group, for example, isn't that right?

[fol. 922] A. Approximately.

Q. About 70 in the Southern Illinois Group?

A. Yes.

Q. Now, the Outer Crescent District from which you show coal rates and first class rates on page 17 of your Exhibit No. 42 is located east and south of the Inner Crescent, is it not?

A. That is right.

Q. And also includes origins in Virginia, Eastern Kentucky and Tennessee?

A. Yes, sir.

Q. And in showing the first class rate from the Outer Crescent you also selected one origin point in West Virginia?

A. I did.

Q. Now, referring to page 16 of Exhibit 12, first, I note that the first class rate from the Inner Crescent to Amboy is $28.60 per ton and the Bituminous coal rate is $4.04 per ton, the coal rate being 14.1 per cent of the first class rate. Page 17 shows that the same identical class rates apply

from your origin points in the Outer Crescent District to numerous points in Wisconsin, for example, starting with Zenda down through a number of points and then Janesville. But the coal rate from the Outer Crescent instead of being $4.04 per ton is $5.02 per ton or 98 cents per ton higher; and that coal rate is 17.6 per cent of the first class rate, is that right?

A. That is right.

[fol. 923] Q. So that while the first class rates from these origins in both the Inner and Outer Crescent are the same to some of the Northern Illinois points as they are to points farther beyond in Wisconsin, the coal rate is considerably higher to the Wisconsin points than to the Northern Illinois points, is that right?

A. The same situation as we have from Illinois and Indiana.

Q. Well, your class rates from Illinois to Indiana, however, are higher than to the Wisconsin points, are they not, as indicated by your exhibit?

A. I meant the coal rates to Wisconsin from the Crescents, than they are to Illinois, the same as reflected in the rates from Illinois and Indiana to Illinois and Wisconsin.

Q. But the class rates are the same, therefore you get a higher percentage from your coal rates than your class rates, than you did from Illinois and Indiana?

A. Well, your class rates are on a mileage basis figured by the shortest possible route and the distance to a point in Wisconsin from West Virginia on that mileage formula may be less than the mileage from the same origin to the same destination in Illinois.

Q. In view of that fact, do you think the comparison shown on pages 16 and 17 of your exhibit really means anything?

A. Not the comparison that you are trying to make, no, sir.

Q. Well, that is the comparison the exhibit shows, isn't it?

[fol. 924] A. It shows what the rates are.

Q. And you presented it for the purpose of showing what the comparative percentage of the coal rates from Illinois and Indiana are of the first class rates and from these Eastern districts to these same destinations?

A. How much lower the Illinois and Indiana rates are as compared to first class.

Q. Will you turn to pages 18 and 19 of your Exhibit 12. Now, have you made any investigation with respect to the transportation conditions, talking about an independent investigation, of the transportation conditions surrounding the movement of coal from the Ohio mines to the destinations involved or the volume of the movement?

A. I read the record in this case, 192 ICC 413, and there was considerable operating transportation testimony in that case.

Q. Well, that is all you know about it? You didn't make any independent investigation?

A. No. That investigation was made by the Commission.

Q. And that was made about when, 1929?

A. I think so.

Q. Now, I note on page 18 you show volume of Bituminous coal in tons of 2,000 pounds, year 1931, from the Ohio districts shown to the destinations shown. Do you know whether that same volume or any tonnage is now moving from those origins to those destinations at the present time? [fol. 925] A. I don't know that the same volume is moving, but I understand coal is still moving under these rates in substantial quantities.

Q. Do you know of your own personal knowledge whether it is moving or not?

A. I get the reports of the Ohio Coal Bureau that show that information.

Q. But you didn't feel it necessary to put the present tonnage down in lieu of the tonnage for 1931 in this exhibit?

A. No. This was lifted from the decision of the Commission in 192 ICC 413.

Q. All you know is what the Commission put down in the decision?

Mr. Kaier: No. He also told you he knew from a report, Mr. Stadell.

Mr. Stadell: All he knows about this though is that he took it out of a decision of the Commission and put it down on a piece of paper and is putting that in this case.

The Witness: I didn't check the way bills because they weren't available to me, to see if these tonnages were correct, but I assume they were because they were in the Commission's decision.

By Mr. Stadell:

Q. I asked you if you didn't think it was important, in view of the fact you said you knew what the tonnage was, or you had access to reports that showed it, to show the tonnage moving at the present time rather than the ton-
[fol. 926] nage that moved in 1931, or twelve years ago?

Mr. Kaier: I submit it is more important to show the tonnages upon which the Commission acted.

Mr. Stadell: Well, we are trying a case in 1943, Mr. Kaier, and possibly these are paper rates today, as far as this record shows.

By Mr. Stadell:

Q. Now, I notice that on page 19, in the column headed Volume of Bituminous coal in tons of 2,000 pounds year 1931, you show no tonnage.

A. None appearing in the Commission's decision.

Q. Are we to assume from that none moved and these are purely paper rates that the Commission prescribed?

A. No, I didn't want to leave that assumption.

Q. What assumption do you want to leave, that there was tonnage moving?

A. Yes, I understand there was and is.

Q. Where did you get that information that there was, if not from the Commission's report?

A. I had these Ohio Coal Bureau reports going back many years.

Q. You checked those to determine whether there was tonnage moving in 1931?

A. Just looked them over as they come in.

Q. Was there tonnage moving in 1931 from those reports that you had?

A. As I recollect it, yes.

[fol. 927] Q. How much tonnage was moving and why didn't you put it on this exhibit?

A. I said I just took this information from the Commission's report and didn't go beyond that.

Q. Well, as far as your present knowledge is concerned, you don't know whether there was any tonnage moving from the origin groups to the destinations shown on page 19 of Exhibit 12, from 1931 down to the present time, or what the volume was or is, do you?

A. I don't recall the figures.

Q. So that your answer to my question is "No", is it?

A. No, I wouldn't say that I don't know.

Q. Well, if you do know, what is it?

A. I said I don't recall the figures, but I wouldn't say there wasn't any movement.

Q. Well, you don't know of any, that is what I am getting at.

A. I don't know the volume of the movement.

Q. You don't know of any right now, do you, on your present knowledge?

A. Not the exact tonnage figures, no, sir.

Exam. Trezise: Well, do you know that there is any? That is what he is asking.

The Witness: I said yes, at least I intended to.

By Mr. Stadell:

Q. You know that there is tonnage moving from the origin groups in Ohio to the destinations shown on page 19 [fol. 928] of your exhibit and that there was tonnage moving in 1931?

Mr. Hunter: I object to the question. He has been over it half a dozen times.

Mr. Stadell: The trouble, Mr. Hunter, is that Mr. Kuhls will not make a straightforward honest answer. He wants to evade every question. We will save a lot of time if he will just give a straightforward answer.

Exam. Trezise: Both statements may be stricken from the record. Let us have some proper remarks. The witness cannot be accused of being dishonest. Strike it all out.

Mr. Hunter: I merely objected because we have been all over that. He knows Mr. Kuhls has indicated his position.

Exam. Trezise: Mr. Stadell, you get your answer now, if you want, if you haven't already gotten it.

Mr. Stadell: If he doesn't know and just says he doesn't know, that will settle it, but he keeps trying to indicate he does know without giving the information.

Exam. Trezise: Is that a question?

Mr. Stadell: No. I am stating the reasons why I had to pursue this.

Mr. Hunter: Mr. Kuhls just indicated he didn't recall the figures.

Mr. Stadell: He didn't recall them and he doesn't know them and he can just say he doesn't know them, and that will end the whole thing.

[fol. 929] Exam. Trezise: Well then, he does not know the exact figures, is that correct?

The Witness: I stated that, Mr. Examiner.

Exam. Trezise: But you do know that there are some figures?

The Witness: That is right.

Exam. Trezise: Now, does that answer your question?

Mr. Stadell: It doesn't answer my question, no. I asked him, to his present knowledge, whether he knows that there was any movement of coal from the origin groups in Ohio to the destinations in Ohio shown on page 19 of Exhibit No. 12, during 1931 or down to the present time.

Exam. Trezise: Answer that. Then we will pass it.

The Witness: It is my recollection that there was, but I do not know the volume of the tonnage at the present time.

By Mr. Stadell:

Q. And you didn't feel it important to refresh your recollection in order to try to get that tonnage to include it in this exhibit?

A. No, I didn't anticipate your questions, Mr. Stadell.

Q. Is it your position that the volume of tonnage has nothing to do with making freight rates?

A. Yes, the volume of tonnage and also the lack of volume have a lot to do with making freight rates.

Q. So that if there was a certain volume, you think it would be important to show it, would you not?

[fol. 930] A. That is right.

Q. Now, in expressing the opinions that you expressed yesterday as to the propriety of having a parity of rates from the mines in the Brazil-Clinton Group and the mines in the Linton-Sullivan Group, on all railroads from those groups to the destinations involved here, were you expressing your individual opinion or were you speaking for all of the respondent railroads?

A. That was my individual opinion, because all respondents are as a unit proposing the rates under suspension.

Q. And in expressing your opinion that it would be proper to take into consideration the differences in the quality of the coal from the various origin groups in pre-

scribing the rates from those groups to the destinations involved, is that your personal opinion or——

Mr. Hunter: I object to that as a misstatement of Mr. Kuhls's testimony. Mr. Kuhls, as I recall it, didn't so testify.

Exam. Trezise: Just ask him the question, if you did or didn't.

Mr. Stadell: Strike it and I will reframe it.

Exam. Trezise: All right.

By Mr. Stadell:

Q. In expressing the opinion yesterday, as I understood you to do, that it would be proper for the Commissions to take into consideration the differences in the quality of the coal produced in the various origin groups in Illinois and [fol. 931] Indiana in prescribing rates from those groups to the destinations involved in this case, were you expressing your own opinion or were you speaking on behalf of all the respondents in this proceeding?

Mr. Hunter: I would like to direct the witness's attention to an implication there that he so testified.

Mr. Stadell: Just a minute.

Exam. Trezise: I think the witness can answer that. Go ahead and answer it, Mr. Kuhls.

The Witness: Assuming that is what I said—it happens not to be—that was my personal opinion brought out on cross-examination.

By Mr. Stadell:

Q. Now, you said, assuming that is what you said, and it isn't—what did you say?

A. I said that that might be one of the things, that is, the quality of coal, that might be taken into consideration in making rates. I didn't suggest that the Commission do it and I didn't suggest that it was proper for the Commission to do it.

Q. Well, do you say it would be improper for the Commission to do it?

Mr. Kaier: I object on the ground it is a question of law.

Exam. Trezise: Ask him what he would do, Mr. Stadell.

By Mr. Stadell:

Q. Well, I will put it this way then: You are not suggesting or advocating the Commission do it in this case? [fol. 9322] A. No. That was——

Q. Either on your own behalf or for any of the respondents?

A. That was merely in response to a question. I am not asking the Commission to do it.

Q. Now, in stating, as I understood you, that you would not protest against a reduction of 17 cents per ton in the present rates from Princeton and Boonville Groups to Rockford, Freeport, and these other points, if the Commission made a parity of rates from all mines in the Brazil-Clinton Group on the railroads, other than the Milwaukee, with the rates from the Milwaukee mines, and a parity of rates from mines in the Linton-Sullivan Group, were you expressing your own opinion or your position or were you stating the position of all the respondents?

A. Anything that goes beyond the proposal made or these exhibits were my own opinions.

Q. In other words, anything that you have stated in your testimony, either on direct or on cross-examination, that would suggest that the Commission approve anything except the rates under suspension, is to be taken as your own opinions as to what should be done and not the opinion or positions of the other respondents?

A. That is right.

Mr. Stadell: Mr. Examiner, I move now, referring to Exhibit No. 12, that pages No. 13, 14, 15, 16, 17, 18, and 19 of [fol. 9323] Exhibit 12 be stricken from the record on the ground that as disclosed by the cross-examination of Mr. Kubik there is no showing of substantial similarity of transportation conditions surrounding the movement of coal from the Illinois or Indiana mines to the territory involved until the movement of coal or the other commodities shown on those pages of the exhibit from or to the origins shown on those exhibits. There is no showing of any similarity in transportation conditions, subject-matter, or any of the other essential circumstances which the Commission has repeatedly held must be furnished to make such comparisons competent, and the witness does not even know whether many of the mines shown on page 13 of Exhibit 12 are in existence

at the present time, they having been prescribed as far back as 1915, twenty-eight years ago.

My objection is on the ground that they are irrelevant, immaterial and incompetent and without any probative value.

Exam. Trezise: The objection is overruled on the ground that your interests are protected. Your objection goes to the weight of that evidence rather than to rejecting it completely. With the cross-examination, in due deference to your request, I think you are fully protected. You cannot be prejudiced by the acceptance of it. Is that all the questions you have?

Mr. Stadell: I have some additional questions I was going to ask of Mr. Kuhls.

Exam. Trezise: Let us have a recess.

[fol. 934]. (Recess taken.)

Exam. Trezise: All right, gentlemen, let us begin. Mr. Stadell, do you have some further questions now?

Mr. Stadell: Yes.

Exam. Trezise: Proceed.

By Mr. Stadell:

Q. Will you refer to page 13 of Exhibit 12 again, please, Mr. Kuhls. In connection with the rates on coke that you show there as having been prescribed on the basis of 16½ per cent of the first class rates, was that basis prescribed to apply in connection with distances computed over the shortest possible routes between origin and destination?

A. That basis was prescribed by the Commission in I. & S. 3511, involving coke rates from Ashland, Kentucky, and Southern Ohio ovens to I. F. A. and W. T. L. territories, and the mileage formula in that case was the so-called short line mileage.

Q. That would be computed over the shortest possible distance between origin and destination, wouldn't it?

A. Not exactly the shortest, because in a class rate formula there are certain groupings that doesn't make the rate to each point the rate for the shortest possible distance.

Q. Well, the method of computing distances though—you said it was prescribed to apply from how many origins?

A. From Ashland, Kentucky, New Boston——

Q. Massachusetts?

A. No, Ohio, and some other Southern Ohio ovens.

[fol. 935] Q. And what the Commission prescribed was a mileage scale?

A. Yes, sir.

Q. The scale itself was supposed to be about 16½ per cent of the first class, the Commission so stated, the first class rate scale?

A. That is right.

Q. And the mileages they said that should be used in connection with that were to be computed over the shortest possible route, for example, from Ashland, Kentucky, to the destinations involved?

A. That is right.

Q. And the rate having been established on that mileage would then be applied, of course, over the tariff routes that the carriers established?

A. That is correct.

Q. And the distances over those tariff routes would generally be longer, would they not, than the shortest possible distance between the same points computed in accordance with the formula in that case?

A. They would in certain instances.

Q. So that the actual rates would be less than 16½ per cent of the first class rates based upon the distance over the routes over which the traffic actually moved?

A. No; it would be the same percentage of the class rates, regardless of how you figured them.

[fol. 936] Q. Well, your class rates applied from groups, did they not, origin groups to destination groups?

A. That is right.

Q. And your coke rates applied from individual points like Ashland, Kentucky, to individual destinations?

A. Regardless of how you figure the mileage, whether it is the shortest possible or tariff route, you still have the same percentage.

Q. Even though the distance over the tariff route over which the traffic moved was longer than the distance used in computing the rates?

A. The class rate is the same over the shortest possible distance route.

Q. Have you checked any coke rates to determine whether they are 16½ per cent of the first class rates between any of the origins involved for the distance over the shortest tariff route?

A. At that time, yes.

Q. And you determined from that check the rates in effect were actually 16½ per cent of first class?

A. Generally, yes. They varied. Some were less and some higher.

Mr. Stadell: I have a number of questions I was going to ask in connection with the information set forth on Mr. Kuhls's Exhibit 12, pages 21 to 23. I understand, however, [fol. 937] that Mr. Vesey has some questions that he wants to ask Mr. Kuhls in connection with that, and I will let Mr. Vesey proceed; but I would like to reserve the right to ask Mr. Kuhls some additional questions if they aren't asked by Mr. Vesey.

Exam. Trezise: Very well, Mr. Vesey.

By Mr. Vesey:

Q. Mr. Kuhls, as I understood your direct testimony you stated that one of the important factors incident to the establishment of the rates published by the Milwaukee Railroad was the necessity for markets of the mines on that railroad, is that correct?

A. To hold the market.

Q. That is, to hold it?

A. Yes, sir.

Q. In other words, I take it, that one of the factors in your freight rate policy is the establishing of rates which will enable your producers to hold given markets against competitors, is that right?

A. When their competitors' rates are reduced, it is our policy to make adjustments in our rates to the extent possible to continue in competition with the competing groups.

Q. Now, does that policy hold even though the rate which is necessary to bring that about is a rate which is a non-compensatory rate, so to speak, to your railroad, for the cost of carrying the traffic and collection?

A. No. To my knowledge, we do not publish any rates [fol. 938] that are less than compensatory.

Q. Nothing that is less than a compensatory rate on that basis. In other words, you don't publish a rate unless in your opinion that rate is a just and reasonable rate from a minimum rate basis to the railroad?

A. It has to be demonstrated to us that a rate returns more than the actual cost of handling the traffic.

Q. Now, following that theory along logically, does that mean that in the light of your suggestions which you made here yesterday, that in adjusting the rates on Indiana coals to the affected territory, that the rates of the other roads should come down to meet the Milwaukee rates—that in your opinion the present rate from the Milwaukee to the destinations is a just and reasonable rate on the minimum basis?

A. It is higher than a minimum rate and it is lower than a reasonable maximum rate.

Q. Now, I ask you to think back to the time of the decision in 23130, and ask you whether or not you are familiar with the transportation conditions recited and referred to by the Interstate Commerce Commission in that decision.

A. I don't recall it very vividly, but it is my present understanding that the conditions now are approximately the same as the Commission found in that decision.

Q. In other words, so far as you know, there has not been any substantial change in transportation conditions as [fol. 939] found at that time by the Commission in that case?

A. Not general or substantial. There have been some local changes, particularly on our railroad. We have heavier locomotives handling our coal from Indiana than we did at that time.

Q. Could we state it another way and say there has not been such changes as would cause any tribunal such as the Interstate Commerce Commission to change its determination because of any new factors that have entered the picture since that time?

A. No. They said then that the transportation conditions were comparable and I think that that can still be said.

Q. Now, I believe you said this morning in answer to a question by Mr. Stadell that the lack of volume—by that, I take it, you mean volume of traffic—moving from an origin group or points to destinations should have something to do, or that it has something to do with the determination of just and reasonable rates, is that right?

A. Yes, I meant there that it is the function of the railroad to establish rates that will move traffic.

Q. Now then, just exploring that for the moment, if we were to turn to some of these origin groups and then find that to nearby markets no coal was moving from those origin groups, would that be indicative of an improper rate, in so

far as moving coal from that origin group is concerned, and by improper, I mean an unjust and an unreasonable rate?

Mr. Kaier: I object, Mr. Examiner, on the ground that the [fol. 940] question is one of law. The Commission itself has said many times the mere fact there is no movement doesn't stamp the rate as being unreasonable.

Exam. Trezise: Oh, I think he can ask about the movement, if there is any.

The Witness: No, I wouldn't say that that was indicative that the rate was unreasonable, because you have the quality of the product to take into consideration. For example, we have a number of mines in Iowa. The rates applicable to the Iowa coal in intrastate commerce were prescribed by the Iowa Commission and they are on a very low level, but still they can't compete with Illinois coal because of the difference in the quality.

By Mr. Vesey:

Q. I will ask you to assume that this statement is correct, and I submit, sir, that I will give the proper documentary evidence to support it in the course of this proceeding: That the poorest quality coals produced in the state of Illinois, in so far as domestic coals are concerned, are the Fulton County fine coal; assuming that fact to be true, in your opinion, should that factor be given consideration in the establishing of just and reasonable freight rates on the movement of that coal to the markets where coals that compete with it are consumed?

Mr. Kaier: May I ask, Mr. Vesey, do you mean by "given consideration" by the Commission or by the railroad?

Mr. Vesey: By the railroads.

The Witness: As I understand it, that point that you raise [fol. 941] is probably one that is more contentious than any other involved in rate making. I don't know whether the Commission should consider it or not.

By Mr. Vesey:

Q. You don't know whether they should or not. How about the railroads?

A. Well, I think the railroads would to the extent that the resulting rates wouldn't be less than reasonable, minimum reasonable rates.

Q. Can you help my understanding out just a bit, Mr. Kuhls, by just pointing out concretely to me when quality should be considered as a factor and when quality should not be considered as a factor in the making of freight rates, using your own testimony here as the basis for that answer?

Mr. Biaett: I don't believe the witness has stated it should be definitely as yet. He said it might be.

Exam. Trezise: Let the witness answer it.

The Witness: Well, that is a very difficult question for me to answer because it involves law, and I don't know that my answer could mean anything. I couldn't really put my finger on the point at which it should be given consideration and to what extent it should be given consideration.

By Mr. Vesey:

Q. Let us put it another way, to get it concrete. As a rate making expert, holding the position that you do with this great railroad, the Milwaukee, would you subscribe to the theory that the highest level of rates should be imposed [fol. 942] upon the lowest quality of coal?

Mr. Kaier: Now, imposed by the Commission or by the carriers?

Mr. Vesey: Either one. It is immaterial.

Mr. Kaier: Mr. Examiner, I desire to make an objection. I think it is material. If Mr. Vesey is asking whether the Commission may impose the highest level, that is a question of law and this witness should not be allowed to answer. On the other hand, if he is asking as to what the carriers should be permitted to do, the question is irrelevant because there is no question here as to what the carriers may do or may not do. The question here is what the Commission is being asked to do.

Exam. Trezise: Would it serve your purpose, Mr. Vesey, to ask him whether he thinks there should be a lower rate on a lower quality coal? If you want to ask him that, in view of the fact the Commission repeatedly have refused to prescribe lower rates on fine coal than on lump coal, go ahead.

By Mr. Vesey:

Q. All right, I will ask this question: Do you subscribe to the theory in the making of rates that a lower level of

rates should apply to the lowest quality coals than that which applies to the highest quality coals from any given group of producing districts?

A. No, I don't, because the lowest quality coal might be that produced in the nearest origin district to the destination territory, and this lowest quality coal taking a higher [fol. 943] level of rates may still be able to complete with the higher grade coal by reason of the nearness to the market. For instance, a rate from Fulton County to Peoria might be 110 per cent of the 23922 scale, but because of its nearness to Peoria you might have a rate of such measure that would have no difficulty in competing.

Q. Let us just take from your thinking this geographic advantage of one or the other because of location, and assume that both are located with respect to the market geographically in the same relative position; then what would your answer be?

A. Well, in that case they would be both in the same district and they would have the same quality.

Q. No, assuming the difference in the quality now, but they could be two equi-distant points from the market, if they are located at equi-distant points.

A. From the standpoint of the railroads, I would say that probably we would treat the lower grade coal a little more liberally than we would the higher grade coal in order to prevent the closing of the mine.

Q. Then, I take it, the answer is that other factors being the same, in your opinion, a lower level should obtain for the lower quality coal?

A. When consideration is given to that question by individual railroads, yes.

Q. Now, do you have any reason for not making that kind of a recommendation to the regulatory bodies involved [fol. 944] in this case, the Interstate Commerce Commission and the Illinois Commerce Commission?

Mr. Kaier: As a matter of law, Mr. Examiner, we have one very good reason, and that is that neither Commission has the power to take it into consideration.

Mr. Vesey: Now, let us not argue the law now, please, Mr. Examiner.

Mr. Kaier: You are asking the witness the law.

Mr. Vesey: I am asking whether or not he would be willing to make that recommendation to these two bodies. That is not a question of law.

Mr. Kaier: Well, I submit it doesn't seek to elicit any facts. He is not asking the witness for any facts. What would he recommend to the Commission, that is your question.

Exam. Trezise: Well, I think he can ask whether the witness wants to recommend it. I don't know how important that is. Do you want to recommend price as being the only thing governing coal rates?

The Witness: No, because if it is a question of it being unlawful, I wouldn't want to recommend anything unlawful to the Commission.

Exam. Trezise: But to keep a mine in operation, you might give one person a little lower rate if his coal was not capable of competing with a higher grade coal?

The Witness: I think so, yes.

[fol. 945] Exam. Trezise: That is the commercial situation or economic condition that you, representing the railroad, would undertake to facilitate the operation of the mines on your railroad?

The Witness: That is right.

Exam. Trezise: Pardon me, Mr. Vesey. Go ahead.

By Mr. Vesey:

Q. Will you turn to page 14 of your Exhibit 12, Mr. Kuhls. I want to ask you to help me. I am sort of a neophyte here. To understand just some of the reasoning back of these proposed rates, because as I understand it, you are the freight rate expert for your road, in so far as your road participated in the proposed recommendations of the proposed rates, and on that basis I ask you to take just two examples.

Take Amboy and take Geneva, and turn to the Fulton County Group, because that is the only group where you have shown the per cent of the present rate and also the per cent of the proposed rate, and I want you to explain to me why in the case of Amboy you have a recommendation there that the rate be increased from $1.50 to $1.55, thus changing the per cent the proposed coal rate is of the first class rate from 11.4 per cent to 11.7 per cent. Then when you get down to the illustration such as Geneva, you

there recommend that the rate of $1.65 be reduced to $1.55, thus changing the per cent not upwards, but in this instance downwards, from 11.1 to 10.5. Now, assuming that the relationships here as shown on that exhibit should be given the effect which you asked that they be given effect in your [fol. 946] direct examination, tell me why you had the reverse of the principle set forth in the first instance when you considered the second one?

A. Well, when the carriers published these rates, they did not have before them the class rate level and there was no intention to change the relationship of the coal rates to the class rates. The purpose of the proposal, as explained by two preceding witnesses, is to comply with the decision of the Commission in Docket 25419, the Beloit case, and whatever we show here as the relationship just is the result of that proposal.

Q. Well, do you mean by that answer, Mr. Kuhls, simply to say that so far as these proposals are concerned, they merely signify the desire of the railroads for a little more money, regardless of any fundamental principles involved in rate making?

A. No, it goes beyond that. It is to avoid reductions in rates to Wisconsin destinations, and to bring up the level of rates in Illinois, which have been referred to in scores of cases by the Interstate Commerce Commission as the lowest in the country.

Q. Why, I thought there was some question as to that, particularly with respect to the Indiana rates into this territory. Is my understanding incorrect?

A. Was that a question?

Q. Yes.

A. Will you read the question.

(Question read.)

[fol. 947] The Witness: As to what?

By Mr. Vesey:

Q. As to the rates, having the lower level of rates. You say Illinois, and I say, I thought there was some question as to whether that might be applied to Indiana rather than Illinois. Is that true?

A. Well, the Indiana rates are to be brought up also along with Illinois.

Q. Aren't they, as proposed here, even a little lower, when that issue was thrashed out in 23130, and more particularly the rates on the Milwaukee Railroad by, I believe we determined the other day, about 2 cents worth?

A. I referred to the Beloit case, 25419. You are going back to 23130.

Q. That is right.

A. Well, there is no connection between the two, as I see it.

Mr. Biaett: Mr. Vesey, if you will permit an interruption, I think there is still an error on page 14 of Exhibit 12 to which you referred there.

By Mr. Biaett:

Q. Mr. Kuhls, with respect to the rates to Geneva from Fulton County, by referring to page 9 of Exhibit No. 4, will you tell me if there is one rate or if there are two rates to Geneva?

A. There are two rates.

Q. And in correcting page 14 of Exhibit No. 12, from $1.65 to $1.55, was that a proper correction?

[fol. 948] A. I corrected it to $1.55, which is the so-called going rate to Geneva. There is a higher rate proposed of $1.70, but $1.55 is proposed via the C. & N. W. and the M. & St. L.

Q. And the $1.65 rate which was formerly shown on that exhibit was the present rate to Geneva from Fulton County, which was increased 5 cents under the proposal, to make that $1.70, was it not?

A. That is right. So your $1.55 rate which I now show on page 14, as it was corrected, is an increase of 5 cents over the rate of $1.50, rather than a 10-cent reduction.

By Mr. Vesey:

Q. As I understand that answer, your rate is still $1.55, the going rate on that coal?

A. Yes, but the present going rate is not $1.65 as shown originally on page 14. It is $1.50.

Exam. Trezise: That is the Milwaukee rate?

The Witness: No. We don't serve Fulton County or Geneva. That is the rate via the C. & N. W. and M. & St. L.

By Mr. Vesey:

Q. Well, referring to your Fairbanks-Morse case, there wasn't any requirement in there with respect to increasing any one of those rates, was there?

A. Indirectly, yes. We couldn't increase Rockford in compliance with the Beloit decision and allow the present rates to stand at intermediate points, because that in our opinion would set up prejudices as between Rockford and these other points.

Q. Well, in other words, on this basis then 5 cents would [fol. 949] constitute prejudice, is that right?

A. It had the effect of reducing the hump that would result if we hadn't changed the rates to the intermediate points. The increase was graded back.

Q. But a nickel would constitute prejudice, as you just used it?

A. We had to reduce the increase as we went back, because if we increased all the rates 15 cents, why, we would finally end up at the first station next to the origin mine.

Q. How did your railroad determine, if you did determine, that the rates on Illinois coals to the affected territory were, one, not paying their fair share of the transportation burden, or, two, that those rates were discriminatory rates, in so far as interstate rates were concerned? How did you make that determination?

A. Well, we compared the present rates to Northern Illinois with rates prescribed by the Commission to Iowa and Wisconsin, and we assumed that the Interstate Commerce Commission in prescribing rates to Wisconsin and Iowa prescribed rates designed to share a fair proportion of the transportation burden; and that being the case, any rates lower than the Commission prescribed, a much lower level, did not pay its fair share of the transportation burden.

Q. Now, I take it, that in following that theory it then became unnecessary in your opinion to determine whether [fol. 950] or not, let us say, coals from Indiana into the affected territory had been increasing or decreasing over the period of the past five years, didn't it, or eight years, or whatever period you want to take?

A. Well, in my opinion, I don't think that would have to be considered.

Q. And so you didn't consider it, did you?

A. Not to the extent that it influenced our decision.

Q. And as a result you made no determination to ascertain the fact as to whether or not those coals had been increasing in the last eight years in their movement to the affected territory or whether or not they had taken business from their competitors in Illinois, did you?

A. Well, that is all shown in the record already.

Q. I submit to you it isn't shown in the record already. If it is, where is it?

A. We have the tonnages to representative points. As a matter of fact, it shows that the tonnages have increased from all origins.

Q. Do you mean to say that this record shows the increase or decrease in the movement of Indiana coals, let us say, to the affected territory?

A. Certainly.

Q. How is that?

A. Sure.

Q. To what points?

[fol. 951] A. To points shown in Exhibit No. 4.

Q. Will you turn to your Exhibit No. 4 and show me that.

A. Section 10—No, it isn't Section 10. It is Section 8. We show from Indiana, we show Illinois, Indiana and Western Kentucky, to DeKalb, Dixon, Freeport, Geneva, Rochelle, Rockford, Sterling. The total from Illinois to those destinations in the first six months of 1941 was 340,000 in round numbers; the first six months in 1942 it was 395,000; Indiana, first six months of 1941, 148,000, and the first six months of 1942, 181,000.

Q. In other words, your only comparison is the first six months of 1942 as against your first six months of 1941 and the last six months of 1941. Do you mean that that is the extent to which you made your study to determine the effect of the present rates upon the movement of coals to this territory? Is that the extent of it?

A. I said we did not consider it to the extent that it influenced our decision here. We just knew the general knowledge that the movement was increasing.

Q. Mr. Kuhls, don't you know and aren't you willing to say that as far as that exhibit is concerned, it is absolutely meaningless in so far as showing any fluctuations or variations in the movement of coals from any of the districts into this affected territory?

Mr. Biaett: I submit, Mr. Examiner, that the question is purely argumentative. The witness has put in an exhibit —.

[fol. 952] Exam. Trezise: He can say, no, he doesn't know that. He can answer that.

Mr. Vesey: That is very easy to say.

The Witness: I will answer no, if that will settle it.

By Mr. Vesey:

Q. Now, as a freight traffic agent for this railroad, you were fully familiar with the Interior Department's program in 1942 for the buyery and for the stockery of coal, were you not, Mr. Kuhls?

A. Yes, sir.

Q. And isn't it reasonable to assume that any disparity shown in that exhibit with respect to 1942 against 1941 might easily be due to that experience, in view of the fact you are only considering the first six months of the year?

A. Well, Mr. Vesey, my answer probably wasn't broad enough. If you will refer to Exhibit 9——

Q. Let us stay to the one we are on now, and answer my question on that, and then we will go to the next exhibit. Isn't that true?

A. That the increase in the first six months of 1942 over 1941 might be due to the stockery program?

Q. Yes, it is reasonable it might be due to that alone?

A. It so happens that is not the cause of it, because the production generally has increased as shown by Exhibit No. 10, Southern Illinois, for example, in 1941, being much [fol. 953] higher than in 1940.

Q. You mean the production of coal?

A. Yes.

Q. Now, coming back to my question, before we go off on that one, is your answer still the same, that the changes shown in Exhibit 4 could not be accounted for by the buyery program of the Interior Department in 1942?

A. It could be to some extent.

Q. And that being the case, you can't tell from any of the data that you have here in Exhibit 4 as to the effect of freight rates on the movement of coals to the affected territory, just confining yourself to the exhibit?

A. Not exhibit 4 alone, no.

Q. Now, when you go to Exhibit 10 that you are speaking about, that merely shows the increase on an overall basis of Illinois versus Indiana, doesn't it?

A. That is the production, yes.

Q. Why didn't you in your Exhibit 12, I believe it is, at page 20, show your Indiana production for the year 1942?

A. I obtained that information after this sheet was made up, but I didn't show it because my information is that the total production for the country is not definite; it is still estimated.

Q. What was the figure that you had for Indiana coals for the year 1942?

A. 25,470,000.

[fols. 954-967] Q. In other words, it is approximately almost a 7,000,000-ton increase 1942 over 1941?

A. Yes, about six million five.

Q. So when you come down to comparing years, 1942 against 1941, they are meaningless in so far as freight rates are concerned, if we are to give any effect to varying freight rates on the movement of coal, isn't that true?

A. I don't know that it is.

Q. You don't know whether that is true or not?

A. You said meaningless; I don't know that it is.

* * * * * * *

[fol. 968] Exam. Trezise: All right, let's continue. Do we have any questions of Mr. Kuhls?

Mr. Vesey: If the Examiner please, I think I commenced my cross-examination of Mr. Kuhls yesterday when we recessed, and I believe the last question that I have asked Mr. Kuhls was with reference to page 14 of Exhibit 12, and that particular time with respect to movements of coals into the affected territory from the several origin groups involved in this case.

W. H. Kuhls resumed:

Cross-examination (Continued).

By Mr. Vesey:

Q. Now, along that same line, Mr. Kuhls, do you know whether or not any study was made of any kind or character

to ascertain what coals from the various Illinois origin groups were moved into the affected territory and also [fol. 969] to determine whether or not the movement of those coals over the past ten years has increased or decreased and whether or not that had increased or decreased in the same proportion as the increase or decrease in coals of other origin groups of Illinois and Indiana into that territory?

A. No special investigation was made, outside of the showing already made in the record; but of course all the railroads have their general knowledge of what was going on.

Q. And as you—I mean by "you" your railroad—view the situation in this affected territory, I take it that it is your determination that your rates on Indiana coals to the affected territory are on such a level as to produce the fundamental result enunciated by you in the beginning, that is, preserve for those coals the necessary markets in this territory?

A. I do not believe that this adjustment will affect the movement of any of these coals in the territory.

Q. But as far as your coals are concerned, you think there is sufficient to preserve those markets for those Indiana coals?

A. I believe so, yes.

Q. Now, following your same principles and turning to page 14, again, of Exhibit 12, and looking at the rate to Geneva which is here reduced from $1.65 to $1.55, that is the going rate, I presume from your testimony that that is indicative of the belief of some carriers that that rate [fol. 970] should be reduced in order to bring about what, the preservation of markets for Fulton-Peoria coals?

A. I thought it was made clear yesterday that we are not proposing a reduction to Geneva. We are proposing a 5 cent increase. The printed figure here of $1.65 is not the so-called going rate. The going rate is $1.50.

Q. Oh, I see. In other words, then, in line with, I believe, Mr. Biaett's suggestion, the $1.65 rate shown there is not the going rate, is that correct?

A. That is correct.

Q. But the going rate is the $1.50 rate?

A. That is right.

Q. Both of which have been increased a nickel?

A. That is right.

Q. In increasing these rates, did you use some percentage of the first class rate as determinative of the amount of the increase that should have been requested by these carriers?

A. We did not.

Q. You did not?

A. No, sir.

Q. In other words, whether it was 10, 7 or 11 was immaterial to the carriers in making their determination?

A. Cents per ton or percentage of first class?

Q. Percentage of first class.

A. That is right.

[fol. 971] Q. Now, if we were to use the per cent of the first class rate as the yardstick for purposes of comparison with other commodities as shown on page 13 of Exhibit 12, would we not have to confine our comparison to scrap iron as shown on that exhibit?

A. I do not think so.

Q. Well, isn't scrap iron the only one, so far as the evidence here is concerned?

Exam. Trezise: Excuse me a minute.

(Short interruption.)

Mr. Vesey: I will restate my question.

By Mr. Vesey:

Q. Mr. Kuhls, taking the commodities shown on page 13, the only commodity for which there is shown therein any evidence as to the nature of the movement or as to the basic facts upon which the Commission operated in reaching its decision is the case of scrap iron, isn't that true, shown on the face of page 13?

A. I wouldn't know, Mr. Vesey.

Q. Well, isn't it true, Mr. Kuhls, that there is no information shown on page 13 as to, one, the weight of the commodity handled; two, the conditions under which the commodity was handled; or, three, the locale of the commodity in so far as the operation of the decision is concerned, is that true?

A. That is right.

Q. And that is true except for scrap iron, where there is some indication of the processes of the governing body in [fol. 972] arriving at its decision, in that it shows a declining

per cent as the weight of the commodity hauled is increased, isn't that true?

A. Yes, that is true.

Q. In other words, if we follow it logically, the thread of what apparently was the decision there in that case, where we have 15 per cent, when the minimum weight of 50,000 pounds, 12½ per cent when it was 75,000 pounds, presumably it would have been on a 10 per cent basis at 100,000 pounds, isn't that right?

A. I wouldn't know, Mr. Vesey.

Q. I mean following logically the decision as you show it, isn't that correct?

A. Not necessarily.

Q. It doesn't necessarily follow?

A. No.

Q. You mean by that you don't know what they would have found on a 100,000 pound basis, is that it?

A. No, I wouldn't know.

Q. Well, if they had followed the same rate of progression, 10 per cent would have been shown, would it not, for the 100,000 pounds?

Mr. Hunter: I object to that. Now, that is really arguing with the witness. He has answered it. He said he didn't know what the Commission would do.

Exam. Trezise: If the witness knows the answer to that, [fol. 973] I think he may answer.

The Witness: I don't know the answer to it.

Mr. Hunter: In other words we can argue the case on brief.

Exam. Trezise: Rather than with the witness, you mean?

Mr. Hunter: Yes.

Exam. Trezise: Off the record.

(Discussion outside the record.)

Exam. Trezise: Proceed.

Mr. Vesey: What was the answer to the last question?

(Record read.)

By Mr. Vesey:

Q. Well, if we proceeded logically on that basis, Mr. Kuhls, we would then have a comparable load, that is a 50 ton car of coal at a rate 10 per cent of the first

class rate, would we not, for scrap iron, as shown by the decision set forth by you on page 13?

A. I can't say whether that would be logical or not.

Q. Would you say it was unreasonable to arrive at that conclusion from the evidence set forth on page 13 by you?

A. Either way would be merely an assumption.

Q. You wouldn't say that was an unreasonable conclusion to draw, though, would you, Mr. Kuhls?

Mr. Hunter: The witness has stated several times he doesn't know.

Mr. Vesey: I am asking him if that is an unreasonable conclusion to draw.

[fol. 974] Mr. Hunter: I object, Mr. Vesey, to your arguing with the witness. Let's argue it on brief or before the Commission later, but now you are arguing with the witness. Whether it is logical or not is a question for the attorneys. There may be a lot of facts and circumstances in connection with shipments of scrap iron——

Mr. Vesey: I thought perhaps we might just reason together in a situation like this.

Exam. Trezise: I think those are deductions that perhaps you could capitalize on in your brief. The witness says that he hasn't drawn that conclusion.

Mr. Vesey: I thought the conclusion was so obvious, but if it be questioned, all right.

Mr. Hunter: I think these things are merely put in there for the purpose of having something to argue about in the brief.

Mr. Vesey: But not at the hearing, you think, Mr. Hunter?

Mr. Hunter: That is, a reasonable amount of arguing at the hearing.

By Mr. Vesey:

Q. Mr. Kuhls, assuming for the moment that the logic which I have suggested might follow in connection with scrap iron on page 13 is correct, and then addressing yourself to the level of your coal rates, it would then appear, would it not, that rather than your coal rates being lower in comparison with these other commodities in the determination of the Commission in connection with them on specific matters, that the coal rates were, in effect, as [fol. 975] from the several origin groups, Indiana and

Illinois, higher than the prescribed rates by the Interstate Commerce Commission on the other commodities?

A. No, your scrap iron loads heavier than 75,000 pounds, loads heavier than coal in most instances.

Q. Do you have any reason to think or to believe, Mr. Kuhls, that if the Interstate Commerce Commission had, in the several cases referred to by you on page 13, considered weights up to 50 tons per car, namely, 100,000 pounds, that they would have prescribed a rate in excess of 10 per cent of the first class rate? Do you have any reason to believe that?

A. Yes.

Q. And what is that reason?

A. The Interstate Commerce Commission knew, when it prescribed 12½ per cent for 75,000 pound minimum, that scrap iron loads heavier than that, as a general thing.

Q. Did they prescribe a different rate for the 100,000 pounds?

A. No.

Q. Do you know?

A. As far as I know, they didn't.

Q. Oh, you mean you are just guessing, now, as to what 100,000 pounds would be, is that right?

A. No, I am not guessing. I said so far as I know they have not prescribed less than 12½ per cent for minimums above 75,000.

[fol. 976] Q. Well now, but the answer is, is it not, Mr. Kuhls, you do not know what they prescribed for 100,000 pounds, is that not right?

A. I don't know if they prescribed anything.

Q. And as far as you know, it may have been 8 per cent, 7 per cent, 10 per cent or 20 per cent for 100,000 pounds, isn't that right?

Mr. Kaier: Mr. Examiner, this is getting all messed up. The point Mr. Kuhls was making was that this was the minimum weight and the Commission would obviously also consider the average loading.

Mr. Vesey: Are you familiar with the comparisons?

Mr. Kaier: Referring to the fact that the witness testified that 75,000 pounds was merely a minimum weight and not the average loading, just in the same way that 50 tons is not the minimum weight on coal.

Mr. Vesey: I don't believe that is the question that is before the witness now.

Mr. Kaier: It was until you switched it.

Exam. Trezise: Oh, I think the witness may answer the question if he has something enlightening on it that will help you, Mr. Vesey.

Mr. Vesey: Yes, I would like to have that answer.

The Witness: Whether or not I knew——

By Mr. Vesey:

Q. Whether or not you know whether there was a rate [fol. 977] prescribed on 100,000 pounds in the case of scrap iron.

Mr. Kaier: That is on a minimum weight of 100,000 pounds?

Mr. Vesey: Right.

The Witness: I will have to answer that that the Commissioners did not prescribe a different level for the minimum of 100,000 pounds.

By Mr. Vesey:

Q. I thought you told me just a moment ago that you didn't know.

Mr. Hunter: I object to that. The answers are perfectly consistent and if Mr. Vesey will have the answers read or consider them carefully, the witness is answering clearly. Now, Mr. Vesey is muddying the waters here, I think.

Exam. Trezise: Never mind, now. The Examiner understands that the answers are not inconsistent. If they are, you can show that in your brief. Go ahead with your questioning.

Mr. Vesey: It is your understanding——

Exam. Trezise: It is my understanding that his answers were consistent.

Mr. Vesey: My recollection of what he said to Mr. Wilkinson was he didn't know; secondly, he said to me a minute ago he didn't know, and how he says that the Commission did not prescribe a rate on 100,000 pound minimum.

Mr. Hunter: I think Mr. Vesey's trouble is that he didn't carefully listen to the witness' answers. As I have listened, they have been perfectly consistent.

[fol. 978] Exam. Trezise: Have you finished with that question?

Mr. Vesey: I haven't finished. I didn't get the answer to the last question. Does he or does he not know, so I may follow his answers.

Exam. Trezise: He answered your last question.

Mr. Vesey: If the Examiner please, he said, "I shall have to answer that question this way." Now, in the light of his previous answers, that was logical, I will admit that, but I want to know, does this witness know whether or not the Interstate Commerce Commission, in the cases shown, prescribed a rate on 100,000 pound minimum for scrap iron.

By Mr. Vesey:

Q. Now, did they or didn't they? It is yes or no.

A. If I may consolidate the answers I made, I don't know——

Mr. Vesey: Thank you.

A. —that the Commission prescribed less than 12½ per cent as minimums up above 75,000, and therefore I would have to answer your last question that they did not.

Mr. Vesey: Well, now, if the Examiner please——

By Mr. Vesey:

Q. Do you have any commodity rates on a gross ton basis with 100,000 pound minimum weight; do you know of any?

A. On coal?

Q. No, scrap iron.

A. Our company does not.

[fol. 979] Q. I say do you know of any?

A. No, sir.

Q. You don't know of any?

A. No, sir.

Q. Does your railroad have on scrap iron a gross ton rate between Chicago and the Tri-Cities on scrap iron, 100,000 pound minimum weight, Mr. Kuhls? By "you" I mean the Milwaukee Railroad.

A. If we have, I don't know it.

Q. Mr. Kuhls, did you sit in with the carriers in their several joint meetings in connection with the determining

of the points to be used in computing mileages for the several origin groups to the destinations in the affected territory?

A. I did.

Q. In computing your mileages from Indiana, did you use all the points in the origin groups as shown by the tariffs of the various railroads?

A. We did.

Q. In other words, so I may follow you, what you did was, you took the origin groups largely in Brazil-Clinton, in the tariff of the Milwaukee Railroad, and used the mileages from each of these points to the various destinations?

A. Yes, sir.

Q. In other words, you didn't break up any origin groups where the points shown in your tariffs listed them [fol. 980] as being under the origin group as a whole?

A. No, we took each tariff origin shown in the tariff.

Q. Now, did you do that also for the Linton-Sullivan Group?

A. For all groups in Indiana, Illinois and West Kentucky.

Q. You did that for all groups?

A. That is right.

Q. At least, that was the intendment of those carriers?

A. That is right.

Q. There was no consideration to doing otherwise, is that right?

A. No.

Q. In other words, I take it it was your opinion that to do otherwise would have been unfair to the origin group that would be so affected, is that right?

A. Yes, we followed the formula used in the Midland Electric Cases.

Q. And I believe that was the agreement that was arrived at at the pre-hearing conference between carriers and shippers in this proceeding?

A. It was.

Q. Do you have, Mr. Kuhls, your own tariff G. F. D. No. 13833-H, which has Illinois Commerce Commission number 593, I. C. C. number B-7238 before you?

A. I don't have it with me, no, sir.

Q. I will show you, Mr. Kuhls, a document which purports to be the tariff which I have just referred to and I will ask [fol. 981] you if that is the tariff of your railroad here.

A. Yes, it is.

Q. That is the tariff that is now in effect?

A. Yes.

Q. That was in effect, that tariff was in effect in the fall of 1942?

A. Yes, sir.

Q. I ask you to turn to page 6 of that tariff and tell me in what origin group is the origin point Atkinson?

Mr. Kaylor: What state?

Mr. Vesey: Illinois.

The witness: It is shown in this tariff as being in the Fulton County Group.

Exam. Trezise: That is going to some place, some destination, certain destination?

Mr. Vesey: That is the affected territory, points in the affected territory.

Exam. Trezise: To the affected territory?

Mr. Vesey: That is right.

By Mr. Vesey:

Q. Now, Mr. Kuhls, would you direct your attention to page 4 of your Exhibit No. 12. Now, that shows, does it not, the various points in Western Iowa where the differential Fulton County under Southern Illinois is 60 cents, as determined by the old rate as prescribed by the Interstate Commerce Commission in the Midland case, is that correct? [fol. 982] A. Yes, sir.

Q. Now, roughly speaking, the haul, that is the maximum haul involved in each of those destinations is approximately 600 miles, isn't it?

A. From Southern Illinois, yes.

Q. From Southern Illinois. In other words, take your first point, Alton, Iowa. The mileage there is 697.2 miles, is that right?

A. That is right.

Q. And I believe that you show that the average difference in mileage between Fulton County and Southern Illinois to the several destinations shown on page 4 is 226 miles, is that right? I think that was the average that you gave.

A. Yes.

Q. In other words, taking the difference in miles as against the distance hauled on the maximum haul, in that

instance you would have the distance differential approximately one-third or 33 per cent of the mileage traversed by the main haul from the compared point, namely, Southern Illinois?

A. Yes, sir.

Q. Now, if that relationship of the difference to the haul increased, what, in your opinion, should happen to the differential? Should it increase or decrease?

A. If there was a very material difference, it might increase.

Q. You say it might increase? In other words, if we [fol. 983] went from, I say, a 33 per cent relationship to a 60 per cent relationship, you would expect the differential in the rate to widen accordingly, would you not, to increase?

Mr. Kaier: He said it might, didn't he?

Mr. Vesey: That is right; I am trying to find out his answer.

Mr. Kaier: Do you want him to repeat the last answer?

Mr. Vesey: Read my question back, please.

(Question read.)

Mr. Vesey: That is to increase.

The Witness: Well, you would have to take more things into consideration than just the increase in the mileage difference.

By Mr Vesey:

Q. No, I mean just assuming, now, all other things are equal. I am asking, in effect, a hypothetical question.

A. Well, it is rather difficult to answer a hypothetical question because I know of so many rates, adjustments, where that wouldn't happen. It is hard to say hypothetically. You have to compare territory and distance.

Q. All right, the same territory, Mr. Kuhls, the same transportation conditions and everything else. All other things being equal, isn't the logical result of the situation which I have given you an increase in the differential? That is, as you have your change in the relationship of distance hauled from 33 to 60 per cent?

[fol. 984] That would be rather an extreme change. It might under those conditions.

Q. Certainly. And you would expect it to follow, as a rate-making expert, now, wouldn't you?

A. I thought we went over that yesterday.

Q. Just forget about that. We are right on right now.

A. I would have to take all the things into consideration, not just the difference in mileage.

Mr. Vesey: Please, Mr. Examiner, I would like to get the answer so that I can have at least some kind of a logical cross examination.

By Mr. Vesey:

Q. I just want to get your theories, Mr. Kuhls, that is all.

A. Not as an abstract proposition I wouldn't answer it, cover any hypothetical question.

Q. All right, as a rate-making expert, I will ask you if you would expect the revision to follow, that is, as the relationship in miles, the difference against the total increased, would you expect the rate differential to decrease?

A. If rates were made on mileage, yes, naturally.

Q. And you would expect it to decrease?

A. Yes.

Q. The differential?

A. If all the rates were made on mileage, yes.

Q. Let's just bring it down to an actual case. Miles and [fol. 985] everything else being equal, if you had a 5 cent differential for a difference in distance of 10 miles over the mile haul, would you expect to maintain the 5 cent differential where there was a difference of 10 miles over a 15-mile haul from the longest haul?

A. I wouldn't know how to answer that. I know of no such situation.

Q. So that unless there was something peculiar, you would think that that would be a good rate adjustment, is that right, or a proper one?

Exam. Trezise: Well, I don't know why we should spend so much time on it.

Mr. Vesey: If the Examiner please, it is a most important point.

Exam. Trezise: Let the Examiner ask Mr. Kuhls this question:

By Exam. Trezise:

Q. Ordinarily as the distance increases, the differential between groups will decrease? Ordinarily, that is the

ordinary method of making rates, isn't it true? It doesn't always do it. Oh, there are thousands of exceptions, but ordinarily that is the method of making rates?

A. That is the difference between the two origin groups, not the distance to destination?

Q. Yes, two origin groups. As the distance increases from two origin groups, the differential with respect to the [fol. 986] one group compared with the other naturally decreases. That is the method of making rates, isn't it, ordinarily? I don't see that that is such a difficult question.

A. Well, it does exist but I wouldn't say it was ordinary.

Exam. Trezise: All right. There you are.

The Witness: It was not done in the Midland Electric case.

By Mr. Vesey:

Q. Just where wasn't it done in the Midland Electric case, Mr. Kuhls?

A. Turning to page 2 of my Exhibit 12, it will be readily seen. Mileage difference, 32 miles; differential, 10 cents. Another instance, mileage difference, 31 miles, differential, 5 cents.

Q. And that is what you had reference to in your answer?

A. No, that is just one of the instances where that exists.

Q. Well, all right, let's take pages 4 and 5 of your Exhibit, where we have your prescribed differentials of 50 and 70 cents. And there, as to the 70 cent differential, you have distances in the neighborhood of 400 miles, do you not, Mr. Kuhls, for the Southern Illinois haul?

A. It was done in that instance, yes.

Q. And it was logically carried out throughout that whole territory that forms the northern part of the State of Iowa as shown by your map attached to your Exhibit 12, does it not, on page 1?

A. In that case it does, yes.

Q. Why do you have any hesitancy in admitting that, Mr. Kuhls, that as a matter of rate-making and as a matter [fol. 987] of interpreting the decisions of this Commission, that where you have the proposition I have just proposed to you here as a general basis that the results have logically followed? What is the hesitancy in it?

Exam. Trezise: Your question is not being confined to coal alone? You are covering other commodities?

Mr. Vesey: I am covering coal and everything else as a matter of opinion of a rate-making expert, whose opinion I have a great deal of respect for, and I would like to get it into this case.

The Witness: That principle is applied in some cases and it is ignored in others.

By Mr. Vesey:

Q. And you are going to apply it to Brazil-Clinton as against Linton-Sullivan on your own railroad and you have applied it, generally speaking, throughout your hauls, haven't you?

A. The mileage relationship between those two groups is constant.

Q. I am just talking about that principle involved here. You have applied it to Brazil-Clinton as against Linton-Sullivan, haven't you?

A. We only have one differential.

Q. You mean to your nearby points in Indiana you only have one differential Brazil-Clinton against Linton-Sullivan?

A. I thought we were talking about group rates.

[fol. 988] I am talking about your general pattern of making rates.

A. Are you talking about short-haul rates now?

Q. I don't care whether you take short-haul or long-haul. The principle, I think, is the same, is it not?

Mr. Kaier: Of course, if you say Brazil-Clinton against Linton-Sullivan, it has just got to be group rates.

The Witness: When it is short-haul, there are other things taken into consideration besides difference in mileage.

By Mr. Vesey:

Q. So you won't concede that general principle which I referred to?

A. I think it is all right as a theory, but it hasn't been applied.

Q. Would you say it hasn't been applied—you mean by your railroad?

A. No, in rate adjustments generally.

Q. In rate adjustments generally it has not been applied?

A. No, there are lots of exceptions.

Q. Now, just assuming for the moment you did apply it, and let's take your evidence that you have given on page 12, and then turning to, say, for example—I mean Exhibit 12—let's take Janesville, Wisconsin. I will ask you to tell me, one, what is the mileage from Southern Illinois to Janesville and, two, the mileage from Fulton County to Janesville.

Mr. Biaett: I object to the question as being beyond the scope of any of the issues presented in the proceeding [fol. 989] before the Commission at this time.

Exam. Trezise: Well, this hypothetical question is still in the air, as I understand it. He wants to point out some instance outside of this case where it is true. I don't know, perhaps that is all right—What is the distance from Southern Illinois to Janesville over the short tariff route, is that what you mean?

Mr. Zoll: Page 10.

Mr. Hunter: Page 10 of Exhibit 12 is what I think he is directing attention to.

The Witness: The difference between—did you want the mileage?

By Mr. Vesey:

Q. That is right.

A. Page 10 shows the average distance via short tariff routes from Fulton County, 186.8; Southern Illinois, 422; the difference, 235.2.

Q. Now, the differential, Fulton County, or the difference, whichever you want to call it, between them, Fulton County to Janesville and the Southern Illinois rate to Janesville is 79 cents, is it not, Mr. Kuhls?

A. That is right.

Q. And in this instance you have the difference in mileage as compared to the total miles hauled ranges in the neighborhood of about 45 per cent?

A. Do you want me to confirm that?

[fol. 990] Q. I say, roughly, it is about that?

A. I haven't figured it out.

Exam. Trezise: Less than 50 per cent, anyhow.

Mr. Vesey: It is a little less than 50 per cent.

By Mr. Vesey:

Q. Now, if you followed the theory of rate making shown in the Midland case, reflected by your map, on page 1, the differential from Fulton County under Southern Illinois in your affected territory would be in the neighborhood of 79 cents or more, would it not?

A. No, it would be 70 cents.

Q. What?

A. It would be 70 cents instead of 79 cents.

Q. 70 cents. The expedition with which you gave me that answer prompts me to ask you this question: you mean you consider a 70 cent Fulton County under Southern Illinois proper? Is that summing the thing up?

A. No, you refer to the Midland case. I said if the Midland case principle was applied, the differential would be 70 cents instead of 79 cents.

Q. In other words, it would be 70 cents instead of 79 cents if the principles of the Midland case were followed as you interpret them, is that right?

A. The differential of 70 cents was prescribed in the Midland case for a distance difference of 239 miles; therefore a difference of 235 miles at Janesville should not call for a [fol. 991] differential of 79 cents. 70 would be more proper.

Q. I say, interpreting the Midland case as you interpret it, now, the differential Fulton County under Southern Illinois in that territory would be in the neighborhood of 70 cents, is that right?

A. Exactly 70 cents.

Q. It would be just exactly 70 cents?

A. That is right.

By Mr. Stadell:

Q. Pardon me, are you talking now about Janesville or Northern Illinois?

A. Janesville.

Mr. Stadell: Janesville. That is what I thought.

By Mr. Vesey:

Q. And if you followed the logic of the Midland case, that would carry to the contiguous destinations in that territory, right?

A. That is correct.

Q. And as we went further from Fulton County, that differential would increase, right? I mean would decrease?

A. I don't know there because you would go beyond the scope of the Midland case.

Q. Would you go beyond it? By looking at your map, on page 1, where you go from Fulton County to points away from it, your differential runs 70 out to 60 cents as you go straight west, and 70 down to 50 cents as you go southwest, doesn't it?

A. Your maximum——

[fol. 992] Q. Looking at your map, on page 1.

A. The map doesn't show the mileage. You have to look at sheet 2.

Q. You don't have to look at the mileage, do you? It is obvious from the map. You know where Fulton County is located as an origin group?

A. Yes.

Q. And you know the nearest point to the west the 70 cent differentjal is shown in Iowa?

A. Yes.

Q. And as you go further from Fulton County, that differential decreases down to 60 cents, as you go straight west, doesn't it?

A. Yes.

Q. And as you go southwest, it goes to 50 cents?

A. Yes.

Q. And as you move back to the Tri-Cities from Fulton County, it goes up to a dollar, doesn't it, that differential?

A. I think that is a rate difference and not a differential.

Q. All right, either one you wish, difference or differential. The difference in the rates is a dollar in that instance, isn't it?

A. That is right.

Q. And when you come down to Galesburg, the difference is $1.20, isn't it, coming still closer to Fulton County?

A. I think that is the figure.

[fol. 993] Q. Now, if 79 cents would be correct at Janesville from Fulton County as against Southern Illinois, then as we would go north of Janesville we would expect that differential to decrease in line with the principles of the Midland case as evidenced by your own map, isn't that it?

A. If you went beyond Janesville, you would have the same mileage difference between the two groups as at Janesville, so that wouldn't call for any change in the——

Q. You think that the differential ought to be 79 cents as we go further north into Wisconsin, is that right?

A. No, sir, I didn't say that.

Q. Well, I mean following the principles of the Midland case now, Mr. Kuhls, and confining yourself right to it. As you go north of Janesville, further from Fulton County, would you expect the differential to increase or decrease?

A. I would expect it to remain constant.

Q. You would expect it to remain constant?

A. Yes, sir.

Q. All right. Now, as you come from Janesville down towards Fulton County, following the principle of the Midland case, would you expect the differential to increase or decrease?

A. Well, you are getting into short-haul rates again.

Q. I don't care whether it is short-haul or what it is. We used two short-haul rates in our comparisons, by applying rates from Fulton County to Iowa and adjacent points.

[fol. 994] A. The rates prescribed to Iowa in the Midland case weren't short-haul rates.

Q. Will you give me an answer to my question? Would you expect them to increase or decrease the differential?

A. You are tying it down——

Q. Or difference, either one. I don't care how you use it, interchangeably or one way.

A. Your question was tied down to the Midland case and I think my answer was proper.

Q. All right. Just so we won't be so technical, just to get your opinion here, which we consider so valuable in this record, referring to the Fulton County movement and the differences and differentials, ~~as we go towards~~ Iowa from Fulton County, will you please tell me what the differential or the difference, Fulton County as against Southern Illinois, moving into the territory north of Fulton County toward Wisconsin, following those principles would you expect the difference or the differential to increase as we come down to the Fulton County mines?

A. Not necessarily, no sir.

Q. Not necessarily? When you say "not necessarily," what do you mean?

A. Because that is short-haul territory.

Q. Is that the only answer and the only reason you have for making that particular answer?

A. That is right.

[fol. 995] Q. Now, let's go over to Indiana, since you have such qualms about the situation going north from Fulton County. Let me ask you, as you go on your own line, either out of Brazil-Clinton or out of Linton-Sullivan or out of the little group down in the Princeton-Ayrshire District, if it isn't true that the difference, one group as against the other, if the difference in your rates doesn't increase as you approach the origin group which we could use for purpose of comparison?

A. I don't think you could use it as a comparison because those rates in Indiana are on a mileage scale.

Q. On a mileage scale? But the result is the same, isn't it, Mr. Kuhls, as the one we have been talking about?

A. If you put the Illinois rates on a mileage scale, yes.

Q. But I say the result is the same in so far as the varying of the difference or differential is concerned, isn't it?

A. There are no differentials in those short-haul rates.

Q. I didn't say differential. Using either the difference or differential, the result is the same, isn't it? I don't think the——

A. There is a variation in the differences, yes, naturally.

Q. Certainly there is, and as you approach any origin group you want to take, comparing it with another, that difference increases as you come to the mines, doesn't it?

A. Yes, there is a change in the differences.

Q. And it is a general plan of rate-making that you have [fol. 996] in Indiana in respect to all the mines on your railroad, is it not?

A. Those rates you are talking about are Commission-made rates. I don't know what we call what the carriers have done voluntarily, but what the carriers did voluntarily was different than exists at the present time, because the present rates are Commission-made.

Q. Will you give me just one reason, Mr. Kuhls, why the same principles in rate-making should not be applied to Fulton County and the territory involved in this case as have been applied, one, by your own railroad with respect to the Indiana coals, two, by the Commission which you have reference to in prescribing rates for your railroad, or three, if we go to basis of mileage scales?

A. And put the rates on the mileage scale?

Q. Take any basis you want to. Give me any good reason why the principle shouldn't be applied in this territory.

A. Well, we are not advocating it.

Q. That is not my question, is it, Mr. Kuhls?

A. Well, we are not advocating the principle to which you refer.

Q. Do you understand my question?

A. I thought I did.

Q. I asked, now, do you know of any good reason why the same principle of rate-making should not be applied from Fulton County into the territory involved in this case as has been applied by, one, your railroad, that was the Indiana [fol. 997] mines, either short-haul or long-haul territory or, two, by the Commissions with respect to those rates, short-haul or long-haul. Now, do you know of any reason why the same principle shouldn't be applied?

A. And I said that contemplated a mileage scale.

Q. All right, I said do you know of any reason why the principle shouldn't be applied in this area?

A. No, if you want to put the rates on a mileage scale, it could be done.

Q. Now, whether they are put on a mileage scale or not on a mileage scale, is there any reason why the principle shouldn't be applied?

A. I don't know of any.

Q. Thank you. In other words, it doesn't make any difference whether it is the Milwaukee Railroad that is trying to protect its customers or the Burlington, the principles should be the same, isn't that true?

Mr. Biaett: I move the statement be stricken.

Mr. Kaier: If the facts are the same.

Exam. Trezise: That is a question.

Mr. Biaett: Is it a question or——

Exam. Trezise: He said, "isn't it?" That makes it a question.

Now, before we get away from all that, the Commission wants to keep this straight. The differential of Southern [fol. 998] Illinois over the Peoria Group to most of the destinations in Wisconsin is 70 cents, isn't it, or do you know that?

The Witness: It varies, Mr. Examiner.

By Exam. Trezise:

Q. Then you can answer my question in the affirmative. The 70 cent differential from Southern Illinois over Fulton, approved in the Midland case, as shown by report—this is a

question—actually applies for excess distances over those from the Fulton-Peoria Group ranging from 140 miles at Hampton, Iowa, to 290 miles at Melbourne, Iowa. The Commission said that at page 198 in the Fairbanks Morse case, out of which these proceedings come.

Now, does that indicate to you that there is a principle of changing the differentials for the shorter distances as compared with the longer distances? You have a variation here in mileage of 140 miles to 290 miles.

A. That is quite a wide variation. It would appear that the distance progression isn't very controlling.

Exam. Trezise: That is all.

Mr. Hunter: Is that all with the witness?

Exam. Trezise: Mr. Vesey has some questions. Mr. Vesey, perhaps we should take a few minutes recess here.

(A short recess was taken.)

Exam. Trezise: All right, gentlemen, when you are ready we will continue.

By Mr. Vesey:

Q. Mr. Kuhls, I have just one or two questions on [fol. 999] your testimony with respect to the 23130 case, that is the last 13th Section case in this territory. As I understand your testimony, your level of rates from mines in Indiana on the Milwaukee Railroad are today 17 cents a ton lower than they were at the time the Indiana rate structure was compared with the Illinois rate structure in that case, is that correct?

A. Yes, as far as that particular case is concerned, that is true.

Q. So comparing the present-day conditions as against the conditions which were in existence at the time of that case, your level of rates in Indiana on mines on the Milwaukee Railroad is 17 cents a ton lower than the then compared levels, Indiana as against Illinois?

A. That happened to be the difference in the rates at that time, yes.

Q. And since that time there has been a 15 cent increase which you referred to, but that increase was applied to both Indiana and Illinois, was it not?

A. Yes, sir.

Q. So that that 15 cent increase, of course, did not change or has not changed the fact that today mines on the Milwaukee are 17 cents lower than the Illinois level Indiana as against Illinois at the time of the 23130 case?

A. No, sir.

Q. Now, going to pages 21 and 22 and 23 of your Exhibit [fol. 1000] 12, on page 21 you show two of the suspended points in so far as Illinois coals are concerned.

A. I do.

Q. And those are the only two suspended points so far as Illinois coals are concerned that are shown on the comparisons set forth on 21, 22, 23?

A. Yes, sir.

Q. Then on page 22, you have one other suspended point, but that applies only to Indiana, namely, Beloit, Wisconsin?

A. Yes, sir.

Q. Now, taking what I presume to be the purpose of this showing, namely, competition inter and intrastate, I will ask you, first, to direct your attention to page 21. What concerns shown on that page use coals produced from the Fulton-Peoria District?

A. My information is that the W. T. Rawleigh Company of Freeport do; just the two points on——

Q. That is right. That page 21, the suspended points.

A. I have some where the origin of the coal is unknown. It is just Illinois coal or Indiana coal. The specific origin group isn't shown. So that that is the only one I can definitely say uses Fulton County coal, according to my information.

Q. That is the only point in the suspended territory using Fulton County coals that you know of, isn't that right?

A. Yes; definitely yes.

Q. I will ask you to assume this to be the fact, which I [fol. 1001] will state to you now is the fact and which will be shown subsequently, that company used in 1942 848 tons of Fulton County coal. It used no Fulton County coal, Fulton-Peoria coal, in 1941. Is that the burden, then, on interstate commerce, so far as Fulton County coal, which the carriers in this case are complaining of?

A. No, beause, as I stated on direct, all the industries are not listed because some purchase coal from retail dealers and we have no way of determining where that coal origi-

nated, so there may be others; but as far as these pages are concerned, I think that is correct.

Q. You mean that the carriers—I am referring, speaking interstate-wise, are complaining against producers in Illinois in so far as they are shippers over railroads intrastate, on the basis of coal that moves by truck from mine-mouth to consumer, through retail yards?

A. No, I didn't say that.

Q. Well, confining ourselves now to rail competition, do you know of any other competition suffered by interstate carriers of Fulton County coals moved all rail than that which moves to the W. T. Rawleigh Company?

A. That is only part.

Q. I am asking you, do you know?

A. Not definitely, no, I don't.

Q. With what company in the compared territory does [fol. 1002] the W. T. Rawleigh Company compete?

A. I didn't say it competed with any.

Q. Then is it true that so far as you know, Mr. Kuhls, there is no competition as between the user of Fulton County coal in the suspended territory and any concern in the compared territory?

A. So far a my present information is concerned, yes.

Q. Now, let's take the same proposition with respect to Northern Illinois coals as differentiated from the Fulton-Peoria origin group coals, and if I were to take you company by company through the compared group, would your answers be the same as they have been with respect to the Fulton County coal?

A. They would.

Q. And would they be the same with respect to the Springfield coals?

A. They would.

Q. And would it be the same with respect to the DuQuoin coals?

A. No, they wouldn't.

Q. All right, what would be the difference, then, in the case of DuQuoin?

A. I see one here I recognize as the DuQuoin Group, J. I. Case Company at Rockford.

Q. J. I. Case at Rockford?

A. Manufacturing farm machinery.

Q. That is the only one, I take it, that you know of with respect to DuQuoin coals?

[fol. 1003] A. That is all that I have before me.

Q. I take it that is all you know about those, isn't it?

A. With the information before me, yes.

Q. How much DuQuoin coal did J. I. Case Company use in 1942?

A. I don't have that information.

Q. How much in 1941?

A. I don't have that information for any years.

Q. For any year?

A. No, sir.

Q. You don't know whether or not their purchases of DuQuoin coal, then, have increased or decreased, do you?

A. I didn't check into that.

Q. How is that?

A. I didn't check into that.

Q. In other words, as far as you are concerned, it might very well be that there has been a gradual loss of that coal from DuQuoin to some coal outside of the State of Illinois, isn't that true?

A. Yes. They were buying that coal during February and March of this year.

Q. So then, as a matter of fact, Mr. Kuhls, when you take an exhibit such as you prepared here, pages 21, 22 and 23, it doesn't show a single thing with respect to, one, competition Illinois as against Indiana or Illinois as against the outside world, as far as intrastate versus the interstate [fol. 1004] movement is concerned, does it?

A. With respect to the competition between manufacturing industries?

Q. How is that?

A. You mean with respect to the competition between manufacturing industries?

Q. No, I am referring now with respect to burden on interstate commerce; it doesn't show a thing, does it?

A. This isn't the entire burden on interstate commerce that we allege.

Mr. Hunter: I object to that question because the purpose of these pages is not to show a burden on interstate commerce.

Mr. Vesey: What is the purpose of this exhibit, then?

Exam. Trezise: Do you want the witness to answer that?

Mr. Hunter: The witness has answered that on his direct.

Mr. Vesey: I am asking counsel, what is the purpose of these three pages in this exhibit? You put it in through your witness. What is the purpose of it?

Mr. Hunter: Will you repeat the answer?

Mr. Vesey: I would like to have a statement on it, Counsel.

Mr. Hunter: I am not on the witness stand. I would rather have it from the witness. I am not on the witness stand. I am objecting to the question. If you want the witness to repeat the answer he made on direct as to the purpose of these pages, I have no objection.

[fol. 1005] Mr. Vesey: I thought I understood the purpose of it from the witness when he put it in, but I gather from your objection that wasn't the purpose. Now, if it isn't the purpose to show here facts which have some probative value with respect to establishing——

Exam. Trezise: Counsel need not tell the purpose at all if he doesn't want to. Ask the witness questions.

Mr. Hunter: The witness has given the purposes of it.

By Mr. Vesey:

Q. What is the purpose of it?

A. I stated on direct that the purpose of these three particular sheets was to show that there are industries at Rockford and Freeport manufacturing the same commodities or articles as industries in the comparative points. I didn't say that that proved a burden on interstate commerce.

Q. Oh, I see. In other words, the basis for that assumption of yours is that the industry in the compared territory happens to be in the list named in the same line of manufacture as a certain industry in the compared territory, is that right?

A. That is right, and such concerns use coal from Illinois and Indiana.

Q. And you presume, therefore, that there is competition as between those industries?

By Exam. Trezise:

Q. Do you?

A. Yes, sure, I do.

Exam. Trezise: All right.

[fol. 1006] By Mr. Vesey:

Q. Now, how did you determine that any of these concerns shown on page 21 are using Illinois coal? How did you make that determination?

A. Well, I see the daily movement of coal from records that come to our office, and that was supplemented by reports from our agents who made an investigation.

Q. Isn't it a probability, Mr. Kuhls, that each of the concerns using Illinois coal on page 21 during the period January-February, 1941, may have been using that coal for the single reason they couldn't obtain coal from their usual source of supply which, so far as you know, may have been Indiana, Iowa or West Kentucky?

A. No, some of these firms I know from my own knowledge have been using certain Illinois coal for the last ten years and Indiana coal for a long period.

Q. Which ones have been using Illinois coal for ten years shown on page 21?

A. My recollection is the Arcade Manufacturing Company at Freeport have been using Illinois coal for a number of years.

Q. That is for ten years, now. All right.

A. For a number of years.

Q. How is that?

A. For a number of years.

Q. Which do you mean, ten years or a number of years? You said a moment ago some of them had been using it for [fol. 1007] ten years. Which is it?

A. I didn't say each one was using it for ten years.

Q. Do you know of any that has been using it for ten years?

A. I am trying to answer your other question now.

Q. I want to find out first so we are on the same grounds. Do you know of any company here that has been using Illinois coal for ten years?

A. Barber Coleman at Rockford has; J. I. Case Company, at Rockford.

Mr. Bather: May I inject a question here, Mr. Vesey.

By Mr. Bather:

Q. How do you know Barber Colman and J. I. Case have been using Illinois coal for ten years?

A. Well, I would have to tell you about all the reports we get in our office.

Q. What I am getting at, Mr. Kuhls, what is the source of your information?

A. The source?

Q. Yes.

A. Reports that we receive.

Q. Barber Colman is not located on the Milwaukee tracks in Rockford, is it?

A. I know, but our Indiana operator has been trying to get business for a good many years and I knew it was coming from Illinois.

Q. Don't you know that during the past three years [fol. 1008] Barber Colman had the bulk of their coal move from Enosville, Indiana?

A. No, I don't.

Mr. Bather: That is all.

The Witness: Sheet 21 shows they get it from Illinois.

Mr. Vesey: I don't care about the sheet. I want to know what you know.

By Mr. Vesey:

Q. Since the interruption, let's go right back to that particular one. Do you know Barber Colman is using Illinois coal today?

Mr. Hunter: I submit that if his report shows it, that he may answer that he knows.

Mr. Vesey: I don't care. He may answer any way he wants to. I am inquiring what he knows.

The Witness: From the information available to me I know it, yes.

By Mr. Vesey:

Q. And you feel positive of that?

A. I am quite sure.

Q. At least you feel as positive of that as any of your other answers, don't you?

A. I wouldn't answer yes if I wasn't quite positive.

Q. What is that?

A. I say I wouldn't answer yes unless I was quite positive.

Q. Whereabouts in Illinois does it come from?

A. Well, now, you have got two questions hanging in the air. Do you want them answered or—the first question [fol. 1009] I haven't answered yet, for the companies that have——

Q. You have answered two of those and I broke in. I am confining you, then, to Barber Colman, which you said you were quite positive was using Illinois coal. I am now asking you whereabouts in Indiana did it come from?

A. Well, that is one firm. I was going to give you some more but if you are satisfied——

Q. We will get to those in just a moment.

A. You want to know now where the Barber Colman coal comes from?

Q. That is right.

Exam. Trezise: Excuse me a moment, gentlemen.

(Short intermission.)

Exam. Trezise: Proceed.

By Mr. Vesey:

Q. I believe the last question, Mr. Kuhls, was as to Barber Colman, and that is where in Illinois do they purchase their coal?

A. That is my information they purchase it in the Harrisburg district.

Q. Don't you know, as a matter of fact, that since the reduction of the 17 cents we have been talking about in the Indiana rate on your Milwaukee mines that that coal is no longer supplied by Illinois but is supplied by Indiana?

A. I have seen some shipments from Indiana but I didn't understand that Indiana supplied their full requirements— [fol. 1010] or supplied it regularly.

Q. In your anxiety of preserving markets for mines, didn't you find it interesting to inquire, when you had shifts of tonnage from Illinois to Indiana, to inquire the cause of the shift or to find out if such shift had taken place, as is the case with Barber Colman that you have just referred to?

A. We haven't had a shift of tonnage from Indiana. The proportion the last few years seems to be less than it was at the time or prior to the time we reduced the rates.

Q. You mean your shift to Indiana has been less? It has been decreasing lately, is that what you mean?

A. Yes.

Q. In other words, your theory of rate-making is accomplished once the shift is brought about, is that right?

A. If I understand your question, the answer would be no.

Q. What is that?

A. If I understand your question, the answer would be no.

Q. Well, you mean you want something more than just the shift to Indiana? What is the other thing you want, then?

A. I thought you said the shift to Indiana occurred after the reduction was made.

Q. That is the fact, isn't it.

A. No, I said in answer to your previous question that in late years our proportion of the tonnage consumed at Rockford has decreased from Indiana.

[fol. 1011] Q. Well, yes. I mean after you get the business, the proportion of shift decreases; I understand that. Now, my point is, I say your theory of rate-making, as you have enunciated here, is satisfied once you bring about the shift, is that right?

Mr. Kaier: Now, has it been established that there has been any shift?

Mr. Vesey: Well, we just got through with Barber Colman.

Mr. Kaier: I hear you talking about the shift but I didn't hear the witness admitting there is one.

Mr. Vesey: Is there any question about it?

Mr. Kaier: There seems to be.

Exam. Trezise: Let the witness answer. Do you know what question is pending before you, Mr. Kuhls?

The Witness: I thought I answered it before.

By Mr. Vesey:

Q. In other words, your theory of rate-making, as you have enunciated it, is satisfied once you bring about the shift to Indiana, is that right? I mean just so we have the answer in the record.

A. Is satisfied once we bring about the shift?

Q. Yes.

A. And if the shift is in the opposite direction, we are not interested?

Q. No, I am just talking about your theory of rate-making here. What you said was, you want to see your mines get the markets. I said that theory of rate-making is satisfied,

[fol. 1012] as far as you are concerned, once you bring about the shift?

A. There hasn't been any shift, as I tried to explain.

Q. What do you mean, there hasn't been any shift?

A. At the time, prior to the time we reduced the rates, the percentage of coal we handled to Rockford was greater than it is today.

Q. You mean the percentage of Indiana coal that your railroad handled?

A. As compared with the total Indiana, yes.

Q. Yes, we understand that. But I am not interested in your road's competition in Indiana; I am just interested in the shifting of the source of supply from Illinois to Indiana. I say your theory of rate-making is satisfied once, by virtue of whatever you do to your rates in Indiana coal, you bring about the shift from the source of supply to this industry in this territory from Illinois to Indiana?

A. We didn't reduce the rates to bring about the shift. We reduced the rates to hold the markets we then had, and since then the shift has been to Illinois rather than to Indiana; because we are handling a smaller proportion of Indiana coal today than we did prior to the time we reduced our rates.

Q. Yes, I understand that. I think the record is clear on that. In the interests of time, I will move over that.

Now, going to the first question here, what other industries here, over a period of ten years, have been using [fol. 1013] Illinois coal? You named Barber Colman which now has gone from Illinois to Indiana, and J. I. Case. Now, what are the others?

A. J. I. Case, at the time this information was prepared, was buying coal from Zigler, which is in the Southern Illinois District; and the Rockford Machine Tool Company has been purchasing from Harrisburg for a number of years.

Q. Now, all of those companies that you have named are the users of Southern Illinois coals?

A. That is right.

Q. Now, in making up this list and in taking the companies that you have named, I will ask you, first, with what company do they compete in the compared territory as shown on pages 22 and 23?

A. Barber Colman and Case?

Q. Barber Colman, J. I. Case, Rockford Machine Tool; those are the three companies you named.

A. Well, there are several producing machines and farm implements.

Q. Do you know of any company on page 21 that has, one, reduced its prices on its manufactured product; two, lost an order, say, by virtue of a disparity of rates on coal interstate versus intrastate?

A. No. The records of those companies aren't available to me.

Q. What is the nature of the competition between the companies shown on page 21 and the companies shown on pages 22 and 23 which you thought sufficiently significant [fol. 1014] to warrant your calling it to the attention of the Interstate Commerce Commission in this proceeding?

A. I read off the list when I introduced this exhibit: Do you want me to repeat it?

Q. I asked you, what was the nature of the competition that you thought was so significant you wanted to call it to the attention of the Commission in this proceeding?

A. Why, these firms manufacture the same or similar products and are in competition with each other.

Q. In other words, just following that for just a moment, and to use an illustration, let's take the first company, Arcade Manufacturing Company, Freeport, Illinois, using Illinois coal, shown by your report. You don't mean to say by that, do you, Mr. Kuhls, that there is competition between that Arcade Manufacturing Company and some other manufacturing company some place in the compared territory which is of such a nature that that competition is germane to the determination of the issues in this proceeding, do you?

A. I have been in a good many cases where it appeared to be.

Q. Oh, I don't care what happened in the appearances. I am talking about the fact here.

A. I assume if it was important in other cases that it was important here.

Q. That was the basis on which you set these up?

A. That is right.

[fol. 1015] Q. In other words, you might as well have gone to the telephone directory and looked down a list of names and said, gentlemen, that is significant because what ap-

pears to be a hardware company in the compared territory is a hardware company in the suspended territory?

Mr. Kaier: I object to the question. It doesn't seek to elicit any fact; it is pure argument.

Mr. Hunter: I join in that objection.

Exam. Trezise: Well, in summarizing, Mr. Vesey, Mr. Kuhls' testimony, he stated, as the Examiner understands it, that these companies that were named and were checked off the other day produced the same kind of commodities. Now, you have had him say that they compete. I didn't know whether he was induced to say that in consequence of your remark or not. And that is as far as he goes. I doubt whether he knows how intense that competition is.

Mr. Vesey: Maybe he doesn't.

Exam. Trezise: I don't believe he knows that. Now, can't we go ahead on that ground?

Mr. Vesey: If he will just say that, I will be happy.

Mr. Stadell: Well, does he know whether there is any competition at all?

By Exam. Trezise:

Q. To what extent, then, Mr. Kuhls, do these companies that are named on page 21 and so on in your exhibit there compete? Do you know the intensity of that com- [fols. 1016-1017] petition? Are you competent to give testimony on that subject?

A. No, I am not.

Mr. Vesey: Thank you.

By Exam. Trezise:

Q. Do you limit your testimony to the fact that you have indicated here that these companies produce the same general commodities? At least they have the same names. That is about the extent of it, is it? Don't let me carry you too far on that.

A. Well, there would be a distinction, probably, for instance in batteries, one company makes a battery exclusively of a certain type that wouldn't compete with another battery company.

Q. Your exhibit is intended to merely show that they produce the same kind of commodities and that it isn't to show that they compete?

A. No, nor to show one has lost business to another because of these rates.

Exam. Trezise: Does that help you?

Mr. Vesey: Very much. Now, just two questions and I think I will be through.

[fol. 1018] AFTERNOON SESSION

The hearing was resumed pursuant to recess.

2:00 o'clock P. M.

Exam. Trezise: All right, gentlemen, we will proceed.

Mr. Bather: Mr. Examiner, I would like to ask Mr. Kuhls several questions.

W. H. KUHLS resumed:

Cross-examination (Continued).

By Mr. Bather:

Q. I believe you testified that the tonnage to certain destinations has an important part in fixing your rates.

A. Yes, the volume of tonnage would have a bearing on the measure of the rates. For instance, the rates to Chicago are influenced by the thirty million odd tons of coal that goes into Chicago.

Q. All of that coal, thirty million tons, does not originate in Illinois, Indiana or Western Kentucky, does it?

A. No.

Q. Some of that coal comes into the Chicago docks?

A. It comes in by boat. Very little comes into the docks, commercial docks.

Q. I mean dock coal comes in by boat to the dock and is reshipped from Chicago?

A. Very little of it is.

[fol. 1019] Q. What is the movement from the docks to Rockford, do you know?

A. Up until this year I think it was around 100,000 or more.

Q. And who handles that coal?

A. The railroad handles——

Q. What railroad handles it?

A. The Milwaukee railroad.

Q. Now, in the movement of coal from the origin points on the Milwaukee road to Rockford as compared with Chicago, what is your terminal switching absorption at Chicago as compared with Rockford?

A. About seven times greater at Chicago than it is at Rockford.

Q. Can you say how much per ton you absorb for deliveries on your connecting lines in the Chicago district?

A. Oh, it varies. The maximum is 31.2 cents a ton.

Q. And what is your maximum at Rockford?

A. I think it is around $3.00; approximately $3.00.

Q. $3.00 a ton?

A. No, a car.

Q. And that would be about five cents per ton?

A. Six cents.

Q. Now, in the movement of coal to the Central Illinois Electric & Gas Company at Rockford over your line, what railroad serves the Central Illinois Electric & Gas Company?

A. Two railroads. One serves the Electric plant, as I [fol. 1020] understand it, and the other serves the gas plant.

Q. Now, the electric plant, what line serves the electric plant?

A. I think the Illinois Central.

Q. No.

A. Milwaukee? Just the reverse.

Q. No, the C. B. & Q. I will give it to you. It is the C. B. & Q., Mr. Kuhls.

Now, in a movement of coal from West Clinton, Indiana, your line receives all of the linehaul, doesn't it, into Rockford?

A. That is right.

Q. And the C. B. & Q. serving the plant switches the cars from your connection to the plant?

A. Yes, sir.

Q. And do you know what the switching charge is that you absorb in making deliveries to the plant?

A. Not offhand.

Q. Well, as you said, it is approximately $2.97.

A. I don't know the exact amount. I said I thought it was around $3.00.

Q. And I believe you also testified that the movement of that coal coming in on your line amounted to approximately 200,000 tons per year.

A. Yes, if the coal is available. It hasn't been available [fol. 1021] of late; it hasn't moved in that volume.

Q. But taking the 1942 figures, there was a substantial movement of coal over the Milwaukee railroad?

A. Very substantial, yes.

Q. You also have joint rates from Southern and Central Illinois points to Rockford in connection with the Illinois Central through Mendota, do you not?

A. We do.

Q. Is there a substantial movement of coal via that route?

A. There is, yes, sir.

Q. Going back to Mr. Vesey's examination with regard to page 21 of your Exhibit 12, do you know the tonnages of coal going to industries such as the Anderson Metal Products Company, the Colonial Desk Company, Nelson J. Bilstrom, Rockford Varnish Company, Testor Chemical Company, A. C. Woods Company?

A. I don't have the tonnage. My impression is that it is not very substantial.

Q. It is not very substantial? It doesn't amount to a large tonnage?

A. On a year-around basis, all those firms use a considerable quantity of coal but nothing compared to the utilities.

Q. Well, as compared with the other industries such as Barber Colman, J. I. Case, Free Sewing Machine Company, Greenlee Brothers?

A. It would be less than those companies.

[fol. 1022] Q. Very much less, wouldn't it?

A. Yes.

Q. Why didn't you include in this statement the Ingersoll Milling Machine Company?

A. I don't know why it was omitted unless they obtain their coal from dealers.

Q. Do you know that they switched from coal to oil?

A. Well, that is the reason it isn't in here, then.

Q. Do you know that or not?

A. No, I didn't know that.

Q. In showing these industries at Rockford, I do not believe it is your contention that the machines made by Barber

Colman Company, for example, compete with machines made at Freeport, Beloit, Jamesville and other points, Madison and other points shown in the exhibit.

A. I don't know whether the machinery manufactured at other cities, whether they manufacture conveying machinery or not.

Q. In other words, what kind of machinery does Barber Colman produce?

A. I understand they produce conveying machinery.

Q. What is that?

A. Conveyors.

Q. Well, that is wrong but—they produce textile machinery, not conveyors, but that is beside the question. My point is this; that your exhibit does not intend to convey the [fol. 1023] impression that just because a company manufactures machinery, that the particular kind of machinery manufactured by them comes in competition with machinery manufactured in Rockford or other points shown in your exhibit?

A. No, there is quite a number manufacturers in here and as to just how they compete, I wouldn't be able to say.

Q. In other words, textile machinery wouldn't compete with metal working machinery?

A. No.

Mr. Bather: I think that is all.

Exam. Trezise: Do we have further questions?

Mr. Cardy: I have two or three questions.

Exam. Trezise: Mr. Cardy.

By Mr. Cardy:

Q. Mr. Kuhls, will you turn to Exhibit 4, Section V, page 30. That shows the present rates from the Brazil-Clinton and Sullivan-Linton District, the first two columns. The present rate from your mine is $1.80, from mines on your line, and from the other six points of origin located on other lines it is $1.97.

A. That is correct.

Q. As I understand your testimony, this $1.80 which is proposed to be increased 15 cents, thus making it $1.95, will be the going rate and the only kind of a rate that can handle traffic to Rockford, is that right?

[fol. 1024] Mr. Stadell: Now, just a minute, there are four questions in that.

The Witness: No, Mr. Cardy, there is movement from mines on other railroads taking the higher rate.

By Mr. Cardy:

Q. Well, is that relatively small as compared with the movement via the $1.80 rate?

A. Yes, it is relatively small.

Q. As I understood you to say, you handle 90 per cent of the traffic over this particular rate?

A. We handle 95.4 from the Brazil-Clinton District and 78.5 from the Linton-Sullivan District.

Q. What was that 78?

A. 78.5.

By Mr. Stadell:

Q. Is that just to Rockford?

A. Just to Rockford.

By Mr. Cardy:

Q. Now, what have you to say with reference to this $1.95 rate which you are attempting to testify in this proceeding with reference to whether or not you could stand a higher rate and if you had a higher rate, whether or not it would move any traffic?

A. Oh, I think there would be some movement, but it would be very small.

Q. In other words, the proper and just rate, the necessary rate, the rate that is required for the traffic will be the $1.95 if this adjustment goes in, is that not true?

[fol. 1025] A. Yes, we need a competitive rate.

Q. Now what have you to say with reference to any movement moving on the $2.00 rate which is contemplated to apply from mines on other lines in the Brazil-Clinton District to Rockford?

A. I think that there would be some movement.

Q. It would be very slight, would it not?

A. Not in greater proportion to the present movement.

Q. Now, which rate do you think is what might be termed the just and reasonable rate as between the proposed $1.95 and the $2.12 rate in this same group? Which rate are we to take and use as a measure for testing the reasonableness of other rates involved in this proceeding?

A. Why, I think we would have to take the $1.95 rate because that is the rate from the Springfield district.

Q. Then the natural conclusion would be that there is really no justification for increasing this rate of $1.97 from all of the other mines in the Brazil-Clinton district, isn't that true?

Mr. Bather: $1.97?

The Witness: Well, the justification is that the increase is necessary to comply with the Fairbanks-Morse decision.

By Mr. Cardy:

Q. But if you did comply with the Fairbanks-Morse case, there would be no, practically no movement of coal on that rate, isn't that true?

A. There wouldn't be a heavy movement. There would be some.

[fol. 1026] Q. Now, substantially the same situation would apply with reference to your rate of $1.95 on the Sullivan-Linton District and the rate of $2.02 from the mines located on other railroads, isn't that true? In other words, if I asked you the same questions——

A. I think so, yes.

Q. You would make the same answers?

A. Yes.

Q. Now, Mr. Kuhls, in approaching this rather difficult situation, did it occur to you that in publishing two different rates and asking the Commission to put in two different rates from the Brazil-Clinton and the Sullivan-Linton districts that you will have exactly the same situation that you had in Southern Illinois as a result of the General Motors case in the rates to Jamesville, wherein the Commission held that situation unlawful?

A. I don't know. I think there is a little difference there. There was a substantial movement from Southern Illinois on the higher basis of rates.

Q. Well, haven't we the basic facts, namely, that in the General Motors case they picked out five points of origin and reduced the rates from those five points without reducing the rates from other mines in the same district?

A. That was done, but there was a substantial volume of tonnage continued to move from the higher-rated mines.

[fol. 1027] Q. Now, in constructing rates from the Princeton, Boonville and Ayrshire district, you use the $1.97 rate

today, do you not, applying the going differentials, and not the $1.80 rate?

A. Well, the Princeton-Boonville rates are related to the rates published from the Linton-Sullivan group by the railroads that serve both groups.

Q. Well, you take the rate to Rockford from the Princeton district. It is five cents over the Sullivan-Linton.

Mr. Zoll: Seven cents.

By Mr. Cardy:

Q. Seven cents over the Sullivan-Linton rate, is it not? That is the going basis.

A. Yes, seven cents over the rate published by the——

Q. Now, you use the $2.02 rate from Sullivan-Linton and add seven cents to that rate and get a rate of $2.09, is that not true?

Mr. Hunter: To what point?

By Mr. Cardy:

Q. For instance, from Princeton to Rockford.

A. That is the difference in the rate, yes.

Q. Why don't you just apply seven cents over the $1.90 cent rate that the Milwaukee has there in the Sullivan-Linton district?

A. We don't publish the rates from the Princeton groups. We couldn't do anything with those rates.

Q. Nevertheless, by the publication of rates in the manner you have indicated, it increases the differential and it dis- [fol. 1028] turbs the differential that was in effect prior to the reduction by the Milwaukee from its rate in these two districts, isn't that true?

A. The differences were disturbed, yes.

Q. Can you tell me the real reason, if there is any, why you didn't follow your usual practice of constructing rates on coal in this territory and preserve the group adjustment regardless of the measure of the rate now?

A. We don't publish rates from Princeton. We couldn't make any change in those rates.

Q. Now, Mr. Kuhls, just what is the extent of this $1.80 rate? Are there any absorptions at point of origin, or do these rates all apply from mines local to the Milwaukee?

A. Coal could move from a mine in the Terre Haute switching district on these rates.

Q. And what would be the switching absorption and what is the road?

A. The mine is served by the C. & E. I. and the switching charge, I believe, is $2.97 a car.

Q. And the Milwaukee absorbs that out of the $1.80?

A. Yes, sir, if any shipments were routed that way.

Q. But the rate is in, nevertheless. Now, in making deliveries at Rockford, how many connnecting line deliveries have you where you make deliveries off of the Milwaukee railroad?

A. At Rockford?

[fol. 1029] Q. Yes.

A. Three.

Q. And what roads are those industries located on?

A. Illinois Central, C. B. & Q. and the C. & N. W.

Q. That is practically all of the industries, I mean all of the industries in Rockford are located on those four lines, the Milwaukee, I. C.——

Mr. Hunter: I object.

By Mr. Cardy:

Q. Is that not a fact?

Mr. Hunter: That is so obvious. If there are only four railroads in Rockford, they must all be located on those four railroads.

By Mr. Cardy:

Q. Well, is that the fact?

A. That is a fact. They are not equally divided, of course.

Q. In other words, this linehaul rate of $1.80 applies for deliveries at all industries, regardless of whether they are located on the Milwaukee or other lines, is that true?

A. That is right.

Q. And the Milwaukee absorbs that switching charge?

A. Yes, sir.

Mr. Cardy: I think that is all.

Exam. Trezise: Do we have some further questions?

Mr. Bather: Mr. Examiner, I overlooked one question I would like to ask Mr. Kuhls.

Exam. Trezise: All right, Mr. Bather.

[fol. 1030] By Mr. Bather:

Q. Referring again to page 21 of your exihibt 12, you show J. I. Case Company engaged in the manufacture of farm machinery. Do you know what they are engaged in now?

A. Probably production of war products.

Q. Do you know what kind of war products?

A. No, we don't go into that very deeply.

Mr. Bather: Well, if permissible, I would like to say they are manufacturing airplane wings.

By Mr. Bather:

Q. Now, do you think that this exhibit of yours really shows the commodities that are manufactured by the industries named in the exhibit? It is pretty hard for me to reconcile the purpose of the thing because many of the industries shown are not manufacturing the articles shown under the heading of "commodity".

A. Oh, this covers normal times.

Q. Normal times?

A. Yes.

Q. But you have no assurance J. I. Case will get back in the farm machinery production or they might change to something else?

A. I assume they will as soon as the Government withdraws their orders for airplane wings.

Mr. Bather: I think that is all.

Exam. Trezise; All right, Mr. Wood.

Mr. Wood: Please.

[fol. 1031] By Mr. Wood:

Q. Mr. Kuhls, I would like to call your attention to page 13 of your Exhibit 12. I recall you answered to a question yesterday, I believe by Mr. Bather, that this statement of articles taking Class D and Class E rates as listed here was presented by you as a cross section. Do you recall that testimony?

A. Yes, sir.

Q. Who selected these articles on this page to make up the cross section picture?

A. Why, this list was selected some time ago and was in my files.

Q. Now, I say who selected the items to go on this list?

A. Railroad defendants in a number of cases.

Q. That was a committee on which you sat? Did you take part in the selection of these items as a cross section picture?

A. Not for this case. This was selected quite some time ago for other cases.

Q. I am not talking about the time. I want to know who did it and if you had any part in making that selection.

A. Yes, sur-ly.

Q. Now, I notice there are 31 lines numbered up and down in two columns, but some items take more than one rate and some of these items are varied, for instance, different types of ashes, and I have counted them. I note about 32 different commodities listed on that page; that is approxi- [fol. 1032] mately. You can correct me if you think I am wrong. But I would like to ask you if you know how many commodities are listed in Class D and Class E ratings in Western Classification territory prescribed by the Interstate Commerce Commission, total?

A. You mean the commodities normally taking the class rate that have been taken out of the classification and specific rates prescribed?

Q. There are some, between 31 and 62 commodities listed here out of Cla s D and Class E ratings, right?

A. Yes.

Q. Now, how many are there in the aggregate, what is the total number of all commodities in Class D and Class E ratings in the classification?

A. Taking percentage of first class or regular class rate?

Q. I mean the whole list, all of them.

A. I wouldn't know.

Q. Well, we know that there are between 31 and 62 listed here?

A. Yes.

Q. On one page. Now, are there a thousand more, are there a hundred more or are there 10,000 more commodities taking Class D and Class E ratings in Western Classification territory prescribed by the Interstate Commerce Commission?

A. For this rating it wouldn't make any difference whether there was ten or 10,000.

Q. That isn't an answer to my question.

[fol. 1033] A. I told you I wouldn't know.

Q. You have——

Mr. Hunter: Well, I will come to the defense of the witness and object. I don't see the materiality of that line of questioning, Mr. Examiner, and I object to it.

Mr. Wood: I intend to show it, if you will just be patient.

Mr. Hunter: O. K.

Mr. Wood: He has submitted this as a cross section and I want to know if it is a cross section of a million commodities or a hundred.

Mr. Zoll: He said he didn't know, so you would have to proceed to another question.

By Mr. Wood:

Q. Do you have any idea?

A. Well, you are talking about something different than is shown on sheet 13.

Q. If you listed all of the commodities in Class D and Class E, would it take two pages like this?

A. On which the Commission prescribed percentage of first class?

Q. Yes. Could you get all the rest of them on one more page this size?

A. No.

Q. On two pages this size?

A. I doubt it.

Q. One hundred pages this size?

[fol. 1034] A. Yes, I would say so.

Q. Then having answered that as an expert, in making this survey, in making up this cross section, you now present this as a fair and proper cross section of Class D and Class E ratings in Western Classification territory?

A. If I recall what I said, it was a cross section of light and heavy loaded commodities and a cross section of value of the commodities from low to high as compared to coal. Some of these commodities are much cheaper than coal, others are higher.

Q. Do you recall when this list was previously made up for some other case, whether that was a coal case?

A. Yes, it was made up for a coal case.

Q. And you took part in the selection of these commodities, less than 50 on a page, having been presented as a cross section, by multiplication, 500 pages of the same size,

in consideration of that, you, as an expert in making up cross section surveys, deemed this a proper picture for comparative purposes?

Mr. Kaier: I object to the question, Mr. Examiner. The witness has already made it clear how he used the term "cross section," and he has disavowed using it as a cross section of classification ratings D and E, which is the point still being pursued by the question.

Exam. Trezise: Oh, I think he may answer the question, if you have an answer for it.

The Witness: Well, I still think I have described it [fol. 1035] properly as to the percentage ratings on commodities taking Class D and E that are comparable with coal.

By Mr. Wood:

Q. And is counsel correct in saying you have disavowed with respect to this page?

Mr. Kaier: Disavowed what?

Mr. Wood: I don't know what; that was your statement. You said with respect to this page.

Exam. Trezise: Did you disavow anything, Mr. Kuhls?

A. No, I didn't.

Exam. Trezise: All right, he says no.

By Mr. Wood:

Q. Now, if you will turn to pages 21, 22, and 23 of the same exhibit——

Mr. Vesey: If the Examiner please, could we go off the record for one moment?

Exam. Trezise: How many more questions are you going to have, a number?

Mr. Wood: No, this is just one phase. It is the second phase and I am through. I am more than half through.

Mr. Vesey: Off the record.

Exam. Trezise: All right, off the record.

(Discussion outside the record.)

Exam. Trezise: Take a recess.

(Recess taken.)

Exam. Trezise: All right, proceed.

By Mr. Wood:

Q. Mr. Kuhls, you say you got page 13 out of your files. [fol. 1036] Do you recall how long that page had been in your files?

A. Oh, a year or two before the hearing in this previous case, I. & S. 4368, four or five years.

Q. And it was not made up then under your supervision and direction?

A. Oh, yes, I modified the original one by making additions and eliminations.

Q. Oh, you selected, added some commodties and tossed some out?

A. Yes.

Q. Which ones did you eliminate, do you recall that?

A. I don't recall.

Q. How many?

A. I don't recall that either.

Q. How many did you add?

A. I don't remember.

Q. Now, we will pass to your pages 21, 22 and 23 for a moment. I recall yesterday, in answer to Mr. Bather's question about utilities not being listed in there, you said you eliminated them because they were not competing. Do you recall that testimony?

A. Not competing in the sense that manufacturing industries do.

[fol. 1037] A. Yes.

Q. What did you mean, they are not competing? They don't compete with each other or they don't compete with the people that are listed on these three pages?

A. They don't compete with each other to the extent that manufacturing industries do.

Q. Then are we to assume that, in your opinion, all of these companies listed on these three pages are in competition with each other?

A. No, sir.

Q. Well, just how do you apply that word "competing," then? The utilities were not listed because they don't compete.

A. Utilities don't compete because they have a fixed territory to serve. The electric utility at Dubuque can't sell electric power at Des Moines one day and Springfield, Illinois, another day.

Q. I see.

A. They have a fixed market; whereas manufacturing industries do not.

Q. And their rates are fixed and therefore they——

A. They are regulated. They have to get approval of state commissions to build lines and things like that.

Q. You mean they do not compete with each other nor do they compete with these firms?

A. That is right.

[fol. 1038] Q. Do you know how many of these firms have power plants of their own, on pages 21, 22 and 23?

A. This doesn't show the competition of power. It shows the competition of the manufactured product.

Q. That is not an answer to my question. I am asking you, do you know how many of these industries have their own power plants?

A. I wasn't interested so I didn't check into it.

Q. You do not know?

A. No, sir.

Q. But those who do have their own power plants are, in a sense, competing with utilities in the sense they produce their own power and do not purchase the utilities?

A. I don't think so.

Q. Is there one on this list that has its own power plant?

A. Several.

Q. And are pages 21, 22 and 23 offered here because they are competing industries?

A. To the extent they manufacture the same product.

Q. The same product as who, each other?

A. Yes.

Q. Well, who competes with Anderson Metal Products Company at Rockford on Brass fixtures?

A. Well, I think that that industry competes with—I withdraw that. I didn't mention that as a competing article.

[fol. 1039] Q. But then are all the other firms on these three pages offered as competing with each other?

A. No, Mr. Wood. I very carefully read a list of commodities that I thought were produced by competing companies.

Q. Now, turning back to page 13 and noting the commodities listed on page 13 and keeping in mind your pages 21, 22 and 23 of your Exhibit and the commodities manufactured

by the firms listed there, do you mean to imply that there is any reference or connection or semblance between the commodities on the four pages—three pages—as compared with page 13?

A. Certainly not.

Q. Not at all?

A. No, sir.

Mr. Wood: That is all.

Exam. Trezise: Do we have some further questions?

Mr. Stadell: I have just one question I would like to ask.

Exam. Trezise: Mr. Stadell:

By Mr. Stadell:

Q. I understood you to state, in answer to a question by Mr. Bather, that the electric plant at Rockford had been securing approximately 200,000 tons of coal annually from the Indiana mines, and you later stated that that was true when the coal was available. What do you mean by "when the coal was available"?

A. Well, it isn't always available because of local condi-[fol. 1040] tions at the mine producing the coal that is being shipped; machinery breakdowns, strikes and so on.

Q. You mean aside from those conditions, when the mine is closed down on account of a strike or a breakdown, that that coal does move from the Indiana mines?

A. Not all of it, I don't believe. I don't believe Indiana can furnish all of the requirements.

Q. You say they can't furnish all the requirements?

A. At times they can't furnish any.

Q. Do you mean that they have so many other movements that they can't supply the required tonnage to that firm?

A. Lately, yes, the same as all other mines; all other mines in the same position.

Q. But some of those mines did step in and furnish that tonnage to the electric plant, didn't they?

A. Yes, sir.

Q. And those were Illinois mines, weren't they?

A. Yes, sir.

Mr. Stadell: That is all.

Exam. Trezise: Do we have any further questions of Mr. Kuhls?

Mr. Hunter: I would like to ask a few on redirect if the cross examination has been completed.

Exam. Trezise: All right, Mr. Hunter.

Redirect examination.

[fol. 1041] By Mr. Hunter:

Q. Mr. Kuhls, in answer to a question on cross-examination yesterday, I think you stated inadvertently that the carriers proposed to make the Beloit rate 15 cents over the existing rate to Rockford. That was an error, was it not?

A. Yes, it was.

Q. Will you correct it, please.

A. Well, the purpose of this publication under suspension is to increase the rates to Rockford so that they will be not more than 15 cents under Beloit, in order to comply with the decision in the Beloit case.

Q. Mr. Kuhls, I direct your further attention to pages 21, 22 and 23 of Exhibit 12, concerning which a number of questions were asked on cross-examination, and reference was made particularly to the fact that you omitted certain industries, for example, the cement plants at Linwood, Iowa, and at Dixon, Illinois. Have you any explanation for such omission?

A. Well, they weren't exactly omitted. They were not included because these pages do not purport to show all the industries in the affected suspended territory, nor all the industries in the comparative territory. In order to make the least work, I picked out those destinations in the suspended territory for which to make the study. Now, if we had chosen Dixon as one of the points, we would have shown the cement plant at Dixon and naturally we would have shown the cement plant at Linwood in order to give the record a competing industry in the compared destination [fol. 1042] territory. So if I had taken the entire affected territory, there would have been a good many more pages to this showing than there are now.

By Exam. Trezise:

Q. And these industries that you mention here and that you have included and those that you haven't included, you mean by that the industries that do consume coal?

A. That is correct.

Exam. Trezise: Thank you.

By Mr. Hunter:

Q. Mr. Kuhls, I direct your further attention to the considerable discussion that took place during cross-examination with respect to the factors or elements that have to be taken into consideration by the Commission in prescribing differentials between the various groups, particularly between the Fulton County Group and the Southern Illinois Group. Have you any further comment or explanation to make as to what factors you feel the Commission should consider when that matter is ruled upon?

A. Well, practically all of the evidence and questions concerning differentials so far has been directed to the differential between Fulton County and Southern Illinois, two groups out of a total of fifteen. In my opinion the Commission should give consideration to the effect the change in the differential between Fulton County and Southern Illinois would have on the relationship between those two groups on the one hand and the other groups in Illinois, Indiana and Western Kentucky. The Commission did pre- [fol. 1043] scribe a differential of 70 cents Southern Illinois over Fulton County to a large section of Iowa.

By Exam. Trezise:

Q. Eastern and Northern Iowa?

A. Yes. To that territory it might be said that traffic from all the groups in Illinois, Indiana and Western Kentucky, except Fulton County, of course, moves through Fulton County or adjacent territory, and a fixed differential Southern Illinois over Fulton County of 70 cents might be proper under those circumstances; but when you consider Northern Illinois and Southern Wisconsin, it will be found that Fulton County coal moves eastward, whereas the Indiana coal moves westward, and the relationship, that is the mileage relationship between Fulton County and the Indiana groups is entirely different to Northern Illinois and southern Wisconsin than it is to this Iowa territory where the Commission prescribed the 70 cent differential, and accordingly the 70 cent differential fixed in Iowa might be somewhat different than that to Northern Illinois and Southern Wisconsin.

Q. And of course each time you mention the 70 cent differential, you mean Southern Illinois over Fulton-Peoria or Fulton County?

A. Yes. In this proceedings it is referred to as Fulton County under Southern Illinois and in Iowa it was Southern Illinois over Fulton-Peoria.

Mr. Hunter: That is all we have.

Mr. Christiansen: I have a question or two along those [fol. 1044] lines.

Mr. Bather: One minute, Mr. Christiansen. On redirect I want to develop one thing about this Beloit situation that Mr. Hunter brought in.

Recross-examination.

By Mr. Bather:

Q. In the original decision in Docket 25419, in which the Commission fixed the rate to Beloit 25 cents over the rate in effect at that time to Rockford, the carriers published that rate, did they not, from Southern Illinois of $2.25 to Beloit with the differential relationship from the other two groups?

A. Yes, sir.

Q. Now, in Ex Parte 115, that order was modified so that the increase in the Rockford rate was 10 cents, making the rate from Southern Illinois $2.10 and the rate to Beloit was increased 15 cents, making the rate to Beloit $2.40, is that correct?

A. That is right.

Q. So that instead of the difference being 25 cents, it was increased to 30 cents?

A. That is right.

Q. Now, in this case, where the Commission prescribed a basis to Beloit 15 cents over the contemporaneous rate in effect to Rockford west—I don't say west, particularly—but the carriers took the alternative of increasing the Rockford rate to clear the existing rate to Beloit, instead [fol. 1045] of reducing the rate to Beloit to $2.25, is that correct?

A. That is right.

Q. In other words, in order to conserve or preserve the relatively small reduction in the revenue of the carriers to Beloit, you would add a very material increase in the revenues of the coal-carrying lines to Rockford and related points, is that correct?

Mr. Zoll: I will object——

The Witness: No.

Mr. Bather: Well, you can object if you want to. I want an answer to the question.

Mr. Zoll: I wanted to object to the question on the ground that it carried an assumption that a decrease in the Beloit rate would mean a comparatively small diminution of the carriers' revenues, whereas the carriers' case has shown that the reduction in revenue would be considerable.

You may go ahead. I thought I would argue the case here.

Mr. Bather: Well, I don't want you to. I am not arguing the case. I just want this witness to state whether or not the relatively small reduction in revenue by a reduction in the rate to Beloit is reasonable, when considered in connection with the great increase in the revenue which would result in the increases involved in these proceedings.

The Witness: I started to answer your question no, that wasn't the main consideration. That was one. But we [fol. 1046] were looking beyond. We were fearful that the continuation of this low level in Northern Illinois would ultimately bring down the level of the present rates to the entire State of Wisconsin. It was being projected gradually, Beloit, Fort Atkinson, Lake Mills and Jamesville, and it appeared to us that it would continue to spread.

By Mr. Bather:

Q. Taking into consideration the volume of tonnage from Illinois and West Kentucky to Northern Illinois as compared with the volume of tonnage from Illinois, Indiana and Western Kentucky to points in Wisconsin, do you think that, assuming, as you perhaps have, that the adjustment to Beloit might be reflected to other points in Wisconsin, do you think that that justifies a material increase in the rates to Northern Illinois where the tonnage is more substantial than it is to Wisconsin points?

A. Probably not, if the rates to Southern Illinois were on a reasonable level.

Q. I take it you do not consider the rates to Northern Illinois on a reasonable level?

A. I think they are a good deal below reasonable maximum level.

Q. Well, as compared with the rates to Chicago and other points in the Chicago district, and going out to South Bend, Indiana, do you think that the rates to Northern Illinois are on such a very low level as to justify a 15 cent increase in the rate?

A. I think so.

[fol. 1047] Mr. Bather: That is all.

By Exam. Trezise:

Q. Well, Mr. Kuhls, in connection with the answers that you have made, there is to be no insinuation on the record that the carriers failed to observe the Commission's order in the original Fairbanks-Morse case of 25 cents Beloit over Rockford by the establishment of a 30 cent rate Beloit over Rockford, for the carriers had authority to maintain the existing group relationship, is that true?

A. The carriers understood that the order in Ex Parte 115 authorized them to depart from the provisions of outstanding orders to the extent necessary to make the Ex Parte 115 increases effective. That is the question Mr. Bather asked me.

Q. Yes. You had rather a specific order authorizing you to do that thing, did you not?

A. We did.

Mr. Bather: I agree with that, Mr. Examiner.

Exam. Trezise: Yes. This is off the record.

(Discussion outside the record.)

Exam. Trezise: Any further questions? Oh, yes, Mr. Christiansen.

By Mr. Christiansen:

Q. Mr. Kuhls, is it not true that the origin groups in Illinois south of the Fulton-Peoria District are differentially related to Southern Illinois, this destination territory, by specific differentials?

A. Some but not all. I don't believe the Commission [fol. 1048] treated all the groups in the coal cases of 1920.

Q. Which ones aren't differentially related?

A. Centralia. I don't think Centralia was mentioned; and DuQuoin.

Q. Those are rather small groups as far as Centralia is concerned, isn't it?

A. Yes.

Q. How about the Indiana origin groups? Are the Indiana groups related to Southern Illinois or are they related to some other producing district today?

A. Well, I don't know that there is any special or fixed relationship with any specific group. All the rates are related, either by differentials or differences that have existed a good many years and it can be stated in any number of ways. You can say that Linton-Sullivan is 10 cents over Brazil-Clinton or you can say it is 20 cents under Southern Illinois. The way of stating it doesn't change the relationship.

Q. Do you consider the Brazil-Clinton group is definitely related to Southern Illinois by a 30 cent differential?

A. Yes, sir.

Q. Now, if it becomes necessary in this proceeding to readjust the rates between Fulton-Peoria and Southern Illinois in order to establish a reasonable differential between the two groups in Indiana, and the other groups in Illinois being related to Southern Illinois, by a fixed [fol. 1049] differential, will be automatically taken care of, will they not, if they continue to have a set and fixed differential relationship to Southern Illinois?

A. Yes, to Southern Illinois, but that would throw them out of relation with Fulton County.

Q. Do you now advocate, if that should happen, that the Indiana group be related to Fulton County as the base group instead of being related to Southern Illinois?

A. I am asking the Commission to consider the effect it would have on the relationship between Fulton County on the one hand and the other groups in Indiana on the other hand.

Q. In so far as the movement from Fulton County on the one hand and Indiana groups on the other hand, they both move in a northerly direction out of the mine, do they not? Fulton County practically straight north and Indiana northwest.

A. No, Fulton County northeast and Indiana northwest.

Q. There isn't much northeast to it; pretty near straight north?

A. Quite a bit; Rockford, Jamesville.

Q. Now, when you decided to readjust the rates to comply with the Fairbanks-Morse latest decision, you didn't comply

with that decision in the rates from Atkinson to Rockford, did you, the published proposed rates? Is it not a fact——

A. I think not.

Q. Is it not a fact that under the proposed rates, the differential between Atkinson on the one hand to Rockford [fol. 1050] and Atkinson to Beloit on the other hand would be 29 cents instead of 15 cents?

A. I think that is the difference in the rates, yes.

Q. Do you know of any reason why that should exist?

A. There is no particular reason that I can think of why it should be that way or why it shouldn't be that way.

Q. The Atkinson rate to Beloit is $1.94; the Fulton County rate to Beloit is $1.80. Do you know of any reason why the Atkinson rate should be 14 cents a ton higher than the rate to Beloit?

A. I thought there was quite a difference in the mileage.

Q. If Atkinson is 35 miles less, in round numbers, than Fulton County, why should it be 14 cents a ton higher? Do you know of any reason?

A. Well, that is just one of the differences in rates that you can't always find the answer for.

Q. Do you feel you have complied with the decision in the Fairbanks-Morse when you leave a 29 cent differential between Rockford and Beloit on the Atkinson movement, rates?

A. The 30 cents a ton was——

Q. I am talking about the 15 cents a ton; the present proposed rates.

A. Oh, I beg your pardon. I am not familiar with those rates, Mr. Christiansen. In fact, I didn't even know what the measure of the rates was.

[fol. 1051] Q. The rate to Beloit is $1.94 from Atkinson and the proposed rate to Rockford is $1.65, making a difference of 29 cents.

A. I didn't go into those rates.

Q. Do you know of any reason why the Beloit rate should be 29 cents higher than the proposed Rockford rate, in the light of the Fairbanks-Morse decision?

A. No, I think the Atkinson rate to Beloit could be the same difference over Rockford as the other rates.

Mr. Christiansen: Thank you.

By Mr. Bather:

Q. What do you mean by that? To raise the rate to Rockford 15 cents over the existing rate to Beloit?

A. Yes, sir.

Exam. Trezise: Any further questions?

Mr. Christiansen: One more question:

By Mr. Christiansen:

Q. Do you know of any reason why the Atkinson rate to Rockford should be 15 cents higher than the Fulton County rate to Rockford for 35 miles less distance?

A. I spoke in the abstract there. If you have got to have a 15 cent difference between the two cities, that difference can be brought about by increasing the Rockford rate as well as it can be brought about by reducing the Beloit rate.

Q. The more reasonable basis would be to reduce the Atkinson-Beloit rate rather than increase the Atkinson-Rockford rate, when the Atkinson point of origin is the nearest point in the Fulton County group to the destination, would [fol. 1052] it not? In other words, there is no reason why Atkinson should be higher than Fulton County to this territory, being as it is the closest point in the origin group?

A. I haven't gone into those rates, as I said, Mr. Christiansen.

Q. Well, just as a traffic man, would you say there was any reason why it should be?

A. I would rather give that adjustment some study before I answer any questions concerning it.

Q. Well, let's make a little study of it. The mileage from Atkinson to Rockford is 115 miles, according to the carrier's Exhibit No. 4, on page 12 of Section III. The mileage from Fulton County to Rockford is 153 miles. Now, from the standpoint of making freight rates based on mileage alone, first, do you know of any reason why Atkinson should have a rate 15 cents a ton higher than Fulton County to Rockford, such as you suggest might be done by making the Atkinson rate 15 cents under the existing Beloit rate?

A. Atkinson and Fulton County are the same to Rockford.

Q. Yes, but you suggest that they might readjust this Atkinson rate to line up 15 cents under Beloit instead of

reducing Beloit 14 cents; make the Beloit 15 cents over the proposed rate to Rockford. Now, what I want to know is, do you know of any reason why Atkinson should be 15 cents or 14 cents a ton higher than the rate from Fulton County to Rockford, based on those mileages?

[fol. 1053] A. Well, we are getting back to a question whether it should be on a distance scale or——

Q. Even if it isn't on a distance scale, do you know of any reason why the nearest point in the Fulton County group, or if you say it isn't in Fulton County, still that is some 35 miles closer than the Fulton County group, should have a rate 14 cents higher to a given destination, I don't care what the destination is?

A. I don't know why it is higher.

Q. You would say it ought to be equalized, wouldn't you; at least that is the worst it ought to be? It ought to be equalized or made lower, wouldn't you say?

A. It could be.

Q. It ought to be, hadn't it?

A. I don't know, really.

Q. Now, didn't you testify this morning on cross-examination and on your redirect examination that you thought that the Brazil-Clinton group, where the mileage was the same from those origin group points on the Milwaukee railroad, as against the mileages from the rest of the origin points on the other railroads in the Brazil-Clinton Group, that they ought to be approximately the same, or the same?

A. Yes, and I would say this might be the same, too.

Exam. Trezise: For a difference in distance of, what did you say, 38 miles?

[fol. 1054] Mr. Christiansen: About 35, I said. I didn't figure it out exactly. It is around 35 miles. It is 115 against the carriers' figures of 153; 38 miles.

By Exam. Trezise:

Q. Well, Mr. Kuhls, should there be evolved from this record some rule of thumb, if you want to call it that, for determining what the differentials should be to the destination territory here between the Illinois groups, based generally upon distance, in somewhat the same manner as was followed in the Midland case, would you say that the same so-called rule of thumb should also apply from Indiana

with respect to the relationship of the rates from the respective groups in Indiana, and do you have any thoughts on that? If it is too general, why, we will just pass it.

A. We didn't come here with any proposal except the rates as we have published them. Of course, the Commission is free to consider or to approve some rates and disapprove others because of existing relationships which they might feel are wrong. But you can't look at it in the same broad aspect as you did in the Midland case because of the shorter hauls. You can't use the same rule of thumb here that you did in the Midland case. You have got longer hauls to Iowa than you do to Northern Illinois. In other words, you can't have one differential for the entire territory.

Q. Well, frankly, the Examiner does not know the answers to these questions and I thought I would like to have a [fol. 1055] little help from some of you experts. I have never been able to see why the rates from some of these groups for longer distances should be lower than some of the rates from the other groups for shorter distances, and if we could get rid of that idea, maybe the Commission could help out in the matter.

A. Well, it takes some study, Mr. Examiner. I can't answer it offhand.

Exam. Trezise: This is off the record.

(Discussion outside the record.)

Exam. Trezise: If there are no more questions, you might think that over.

Mr. Kaylor: Mr. Kuhls, I just want to ask a few questions.

By Mr. Kaylor:

Q. Your testimony shows that you are an expert rate witness for the Milwaukee railroad, and how long have you been with the Milwaukee in rate matters?

A. Nineteen years.

Q. Nineteen years?

A. Yes, sir.

Q. Was the C. M. & G. taken over by the Milwaukee during that time?

A. Prior to that time.

Q. Prior to that time?

A. Yes, sir.

Q. Do you have a direct line from the Indiana fields to these Northern Illinois destinations?

[fol. 1056] A. Some of them, yes.

Q. In your opinion, does that change in any way the situation with respect to the rates from Southern Illinois to Rockford or Freeport since that time?

A. The fact that we acquired the C. M: & G.?

Q. The direct line from the Indiana mines serving—you serve Rockford?

A. No, that doesn't change the situation with respect to the rates from Rockford.

Q. It doesn't change it any?

A. No.

Q. Even though it is a single-line haul?

A. No, I wouldn't say so. The Commission hasn't paid much attention to single-line versus joint line hauls for a good many years.

Q. Did your company oppose the entry of the order by the Illinois Commerce Commission in the Rockford-Freeport cases?

A. We did.

Q. At that time, you did not serve the Indiana mines directly by a single-line haul, did you?

A. Oh, yes.

Q. You did?

A. Yes, sir.

Q. That order was entered in 1926, I believe.

A. We served the Indiana——

[fol. 1057] Q. Did you then have a single-line haul from the Indiana fields?

A. Since July 1, 1921.

Q. You did?

A. Yes, sir.

Q. Then since 1921 you have had a single-line haul from the Indiana fields, whereas to the Rockford-Freeport you had a joint-line haul to those destinations from the Illinois mines?

A. That is correct.

Q. Do you think, or would you want to express an opinion on the Rockford-Freeport cases versus the difference between that and the Interstate cases, with respect to single-line versus a joint-line haul?

A. No, I don't think it enters into it.

Q. You want to maintain group rates?

A. That is right.

Q. Origin and destination?

A. Why, I think there could be some group rates at destination. I think the industries would like to see Rockford and Freeport get on the same basis, even though distance might call for a little higher rate at one or the other. Carriers won't object to that; that is, won't object to keeping Rockford and Freeport on the same basis.

Mr. Kaylor: All right, thank you.

Exam. Trezise: Are there any further questions? (No response.) Mr. Kuhls, you may be excused and thank you [fol. 1058] for your patience and tolerance and consideration.

(Witness excused.)

Exam. Trezise: All right, Mr. Cook.

Mr. Cook: Mr. Washer.

H. H. Washer was sworn and testified as follows:

Direct examination.

By Mr. Cook:

Q. Will you state your name and address for the record, please.

A. H. H. Washer, General Coal Agent, Chicago & Eastern Illinois Railroad Company, Chicago.

Q. How long have you been connected with the Chicago & Eastern Illinois Railroad?

A. Twelve years.

Q. Are you familiar with the rates involved in these proceedings?

A. I am.

Q. Have you prepared a statement containing your testimony?

A. Yes, I prepared a brief statement which I would like to insert in the record.

Mr. Cook: If there is no objection, Mr. Examiner, I would like to have Mr. Washer read that statement.

Exam. Trezise: He may read it providng he reads no argument.

The Witness: The Chicago & Eastern Illinois Railroad, [fol. 1059] serves mines in the Southern Illinois, Spring-

field and Danville Groups of Illinois and the Brazil-Clinton, Linton-Sullivan and Princeton Groups of Indiana. I shall try to explain briefly for the record the coal rate judgment as it now stands from the Danville Group of Illinois and from the Indiana mine groups to Rockford and Freeport.

Dealing first with Danville I may say that the present rate resulted from orders entered by the Illinois Commerce Commission in their Dockets 13558 and 13569 of March 7, 1928, plussed by the amounts of subsequent general increases. In those cases the Illinois Commerce Commission prescribed a rate of $2.00 per ton from Southern Illinois and required maintenance of existing differentials under Southern Illinois from the Fulton-Peoria, Springfield, Centralia, Belleville, DuQuoin and Danville Groups. After some litigation the carriers ultimately complied with these orders by tariff publications effective August 20, 1930, restricting the rates to intrastate application. This resulted in a reduction of 17 cents per ton in the rates from the several Illinois groups referred to. The Danville Group at that time was the same as Springfield and 30 cents per ton under Southern Illinois, as it is today.

Prior to the reductions made in the Illinois rates as a result of Dockets 13558 and 13569 the rate from Brazil-Clinton to Rockford and Freeport was the same as from Danville and Springfield and the net result of literal compliance with the Illinois Commission's orders was the estab- [fol. 1060] lishment of rates from the Danville and Springfield Groups 17 cents per ton under Brazil-Clinton.

Subsequent efforts on the part of the carriers to bring about through 13th Section proceedings an increase in the Illinois rates, Docket 23130, 182 I. C. C. 537, were unavailing because the Interstate Commerce Commission held that the prevailing rates from Indiana mines to Rockford and Freeport were so low that they would not be justified in requiring an increase in the Illinois intrastate rates. Following that the Milwaukee Railroad undertook to restore the relationship formerly existing between the Brazil-Clinton and Springfield Groups by a reduction in their Brazil-Clinton rates and ultimately succeeded. As the situation now stands the rates from mines on the Milwaukee Railroad, in the Brazil-Clinton Group, are the same as apply from the Danville and Springfield Groups of Illinois, whereas the rates of other lines serving the Brazil-Clinton field are 17 cents per ton higher.

The Milwaukee Road likewise reduced the rates from their Linton-Sullivan Group mines to Rockford and Freeport predicated on the normal differential of 10 cents per ton over their Brazil-Clinton rates and the I. C. Railroad, has since met the Milwaukee's rates from their Linton-Sullivan mines. The rates of other lines serving the Linton-Sullivan field are still on the old basis which, for some reason I have not been able to develop, reflect a differential of only 5 cents per ton over the Brazil-Clinton rates pub- [fol. 1061] lished by those lines. Therefore the rates of the Milwaukee and I. C. Railroads from their Linton-Sullivan mines are 12 cents per ton lower than from mines on other lines serving the Linton-Sullivan Group.

The rates from the Princeton Group are and have always been 7 cents per ton higher than the rates published by lines other than the Milwaukee and I. C. Railroads from the Linton-Sullivan Group to Rockford and Freeport and the Bonnville rates are 3 cents higher than Princeton.

The adjustment made pursuant to the Illinois Commission's orders in Dockets 13558 and 13569 of course had a disturbing effect upon the relationship between the Illinois origin groups involved and all of the Indiana Groups. For instance, the Princeton Group formerly enjoyed a rate difference under Southern Illinois of 18 cents per ton and that difference is now only 1 cent per ton, which it has been since the Illinois intrastate adjustment. Similarly the Linton-Sullivan Group was formerly 25 cents per ton under Southern Illinois and is now only 8 cents under, excepting mines on the Milwaukee and I. C. Railroads. The Brazil-Clinton Group was formerly 30 cents per ton under Southern Illinois and is now only 13 cents per ton under, excepting mines on the Milwaukee Railroad.

From what I have said it will be seen that the present rates and relationships have stood for a number of years and what we are seeking to do in this adjustment is simply [fol. 1062] to increase those rates by 15 cents per ton without disturbing the origin relationships. I feel that the present rates are too low and that the carriers are justly entitled to the increases sought and will receive the full benefit of these increases if they are granted. I am definitely persuaded that the rates which the carriers are proposing and which are now involved in these proceedings represent the only means of achieving the end desired.

By Mr. Cook:

Q: Do you wish to add anything further to that testimony, Mr. Washer?

A. That is all I care to say.

Mr. Cook: Cross examine.

Cross-examination.

By Mr. Cardy:

Q. Is this all the testimony, Mr. Washer, you intend to submit in justification of the increases in the rates on your line to points in Northern Illinois?

A. Yes.

Q. Now, when you say, referred to not disturbing the adjustment, did you have in mind restoring the old adjustment that was in effect prior to the disturbance by the increase or reduction in the Illinois rates?

A. No, the present adjustment does not contemplate that. I mean the proposed adjustment does not contemplate that.

Q. Is there any reason for your taking a different position in this proceeding than you did in the proceeding involving—what was that, 4368?

[fol. 1063] A. Well, there must be a reason, after ten years of fruitless effort in trying to bring about an adjustment in these rates, I can answer your question that somebody had to make a concession and I was one of those who made the concession.

The way I looked at it was this. Unless something was done, the present adjustment would be perpetuated and the present origin relationships would be perpetuated, so I don't see that we are changing that situation any.

Q. This is all the testimony you intend to submit in support of your 13th section proceeding?

A. That is all I personally propose to put in, yes.

Mr. Cardy: That is all.

Exam. Trezise: Do we have any further questions?

Mr. Scott: Yes, I would like to ask some, please, Mr. Examiner.

Exam. Trezise: All right, Mr. Scott.

By Mr. Scott:

Q. Mr. Washer, in your testimony you have pointed out the fact that the Milwaukee rates from the Brazil-Clinton and the Linton-Sullivan District to Rockford and Freeport and other points are lower than those prevailing from the mines on your line in those districts.

A. That is correct.

Q. In the proposal that you have already here that is now under consideration in these proceedings, you have continued that situation, that differential relationship in effect?

[fol. 1064] A. That is true.

Q. Do you mean to imply by that that you approve the relationship between the Milwaukee mines on the one hand and those from your mines on the other to these destinations?

A. No, I don't; never have.

Q. You feel, then, that the relationship between your mines and the Milwaukee mines should be on the same basis?

A. Well, I feel they should, yes.

Q. And is it further your contention that this should be brought about by reducing the rates from your mines to those in effect from the Milwaukee in order to continue the proper relationship between the Indiana groups on the one hand and the Illinois groups on the other?

A. Not necessarily.

Q. You mean, then, that the disruption that was made in 1930 by the orders of the Illinois Commission in reducing the rates to Rockford and Freeport from Illinois groups 17 cents per ton with no similar reductions from Indiana was proper?

A. No, sir, I don't think that was proper, either.

Q. Then the fact that you have offered here rates to the Commission for approval which propose to continue the relationship in effect do not necessarily mean that the C. & E. I. Railroad approve that but are merely done for the purpose of increasing the level of the rates to this destination territory?

A. That is the primary object, yes.

[fol. 1065] Q. You further stated in your testimony that the rates from the Princeton group are and have always been 7 cents per ton higher than the rates published via lines *published via lines* other than the Milwaukee and I. C.

Railroads from the Linton-Sullivan group to Rockford and Freeport and the Boonville rates are 3 cents higher than Princeton. Now, that is the situation in effect at the present time, but isn't it a fact that prior to the reductions from the Milwaukee mines that the Princeton, Ayrshire and Boonville rates were also 7 cents and 3 cents, respectively, over the rates from the Milwaukee mines in the Linton-Sullivan group?

A. Oh, yes, that is true.

Q. So that that situation, where they are not 7 cents from the Princeton-Ayrshire group over those from the Milwaukee was brought about by the action of the Milwaukee in reducing their rates?

A. It was.

Mr. Scott: All right.

Mr. Cardy: Just one other question:

By Mr. Cardy:

Q. Mr. Washer, as I summarized your testimony it appears that you published those rates in order to continue an apparently unlawful adjustment in the Brazil-Clinton and Linton-Sullivan rates.

Mr. Hunter: Oh, I object to that.

Exam. Trezise: Let's cut out the "apparently unlawful" [fol. 1066] and ask him what he thinks about the rates.

By Mr. Cardy:

Q. What do you think about the present adjustment?

A. Do you want me to answer that?

Exam. Trezise: Yes.

The Witness: Frankly, I don't like it too well, but I think it is the best way out of a bad situation.

By Mr. Scott:

Q. The present adjustment?

A. The present adjustment.

By Mr. Cardy:

Q. In other words, you are not maintaining that adjustment is entirely proper as it stands today?

A. As we propose, you mean?

Q. As it stands today and as you propose it?

A. That is right.

Mr. Cardy: That is all.

Exam. Trezise: Any further questions?

By Mr. Bather:

Q. Mr. Washer, you dealt first with the rate situation in Danville. What is the volume of tonnage of coal from Danville to Rockford?

A. There isn't any.

Mr. Christiansen: Mr. Washer, I have one question I would like to ask you.

Exam. Trezise: Mr. Christiansen.

By Mr. Christiansen:

Q. How long have you been with the C. & E. I. Railroad in the coal traffic department?

[fol. 1067] A. Twelve years.

Q. Were you connected with the C. & E. I. prior to that time?

A. No, I was with the L. & N. road prior to that time.

Q. How many years have you been familiar with the rate adjustment in this particular territory?

A. The coal rate adjustment in this territory?

Q. Yes.

A. About fourteen years.

Q. This rate adjustment into the Northern Illinois and the Southern Wisconsin territory has been in almost constant litigation since about 1921 or 1922, has it not?

A. I think that is true, yes, sir.

Q. According to your statement, on page 4, you would continue that rate adjustment into the future for further litigation for the next 25 years or so?

A. I don't—as I say, I don't like this adjustment too well and I don't think it is going to cure everything.

Mr. Christiansen: Thank you.

Redirect examination.

By Mr. Hunter:

Q. Mr. Washer, on page 2 of your prepared statement you will note that you state that the Interstate Commerce Commission held in Docket 23130 that the prevailing rates from the Indiana mines to Rockford were too low. Do you mean by that statement that the Commission held that all of the rates from the Indiana mines were too low or the [fol. 1068] rates from certain of the Indiana groups were too low?

A. The Commission made no distinction.

Q. Are you familiar with that proceeding?

A. You mean in 23130?

Q. Yes.

A. Yes.

Q. Do you know that the Commission had before it in that proceeding only the rates from Boonville and the Princeton groups and did not have under consideration the rates from the Indiana groups?

Mr. Stadell: Now, I object to that.

The Witness: I don't think so. I don't agree with that.

Exam. Trezise: You didn't mean it that way, did you? You didn't mean to say——

Mr. Hunter: I meant so far as the testimony as produced in that proceeding is concerned.

By Mr. Hunter:

Q. It did not have any testimony relating to the rates from the Northern Indiana groups, is that correct?

Mr. Stadell: I object to that, now. The record in that case will speak for itself and Mr. Hunter is very obviously confused, because the Commission's report, which, of course, will also speak for itself——

Exam. Trezise: Well, there is no question about that. The Commission had under consideration all the groups in Indiana. We take that as a matter of fact. But what you [fol. 1069] meant to ask, Mr. Hunter, I think, was that when the Commission made that ruling, on page 550 of 182 I. C. C. 537, you had in mind that the Commission was asking about some other group than the Brazil-Clinton and had in mind

the Boonville group or Princeton-Ayrshire. That was the question, I think, you——

Mr. Hunter: That is correct.

Exam. Trezise: You should have formulated, anyhow. I don't want to put words in your mouth, but I think that is what you wanted to ask.

Mr. Hunter: That is correct.

The Witness: Did I answer that?

By Mr. Hunter:

Q. Yes, would you answer that?

Exam. Trezise: Did we get an answer to that?

By Mr. Hunter:

Q. Would you answer that question, please?

A. Yes. In the findings, the Commission simply referred to Indiana groups. They found they would not be justified in increasing the Indiana rates, in view of the low rates prevailing from the Illinois mine groups.

Q. You participated in 23130 personally, did you?

A. Yes, I did.

Q. Do you know whether the Commission had before it any evidence with respect to the rates from Northern Indiana mines, whether those rates were involved in the rate testimony in that particular proceeding?

A. I didn't get in on the initial stages of that case and I [fol. 1070] don't really know.

Q. Yes. So this statement that you read into the record here is based on the Commission's decision?

A. Based on their findings, yes.

Mr. Hunter: That is all.

Mr. Stadell: I have just a couple of questions.

Exam. Trezise: Mr. Stadell.

Recross-examination.

By Mr. Stadell:

Q. You are appearing here on behalf of the C. & E. I. in support of the proposed adjustment, aren't you?

A. That is true.

Q. And you are asking the Commission to approve it?

A. That is correct.

Q. You are not asking them to prescribe anything different than is proposed and under suspension?

A. Well, if they can find a happier solution, it is all right with me.

Q. Happier for whom?

A. For the C. & E. I. railroad, for example.

Q. And you would rather have them prescribe something other than is under suspension, is that correct?

A. Well, as I say, I am not entirely satisfied with the adjustment as we have published it. But in order to accomplish something, I would rather see this adjustment approved rather than let it go by the boards entirely. Now, [fol. 1071] if the Commission can figure out a better adjustment, I would be glad to see it done.

Q. Regardless of whether that better adjustment resulted in additional increases in the Indiana rates so as to be a more proper level in comparison with the rates to Illinois?

Mr. Scott: I object to that, Mr. Examiner. What does he mean by putting on a more proper level? It is not shown to be improper. That is for the Commission.

The Witness: I am willing to abide by the Commission's decision.

By Mr. Stadell:

Q. You are not asking them to publish anything different than is under suspension?

A. I am not asking them to.

Q. Would you be perfectly satisfied, the C. & E. I. Railroad will, they will approve the adjustment that is under suspension from the Indiana group?

Mr. Cardy: I object to that. He hasn't said that.

Mr. Stadell: I am asking him whether that is a fact or not. Let's find out.

The Witness: I say I am not entirely satisfied with it but I would rather see that done than to see the present adjustment stand as it is.

By Exam. Trezise:

Q. The proposed you think is better than the present?

A. That is it.

Q. But you don't think so much of the proposed?

[fol. 1072] A. I don't think entirely too much of the proposed. As I say, Mr. Examiner, we made a concession in order to accomplish this adjustment. When you make a concession you certainly are not entirely satisfied; otherwise it wouldn't be a concession, it wouldn't be necessary to make a concession.

By Mr. Bather:

Q. In other words, the C. & E. I. want to charge the other railroads 15 cents more for the hauling of the coal, don't they?

A. No, I didn't say that at all. All we want is to get 15 cents more money out of it, which we are entitled to.

Q. Who do you mean, "we"?

A. I mean the railroads.

By Mr. Cardy:

Q. Who did you have to make that concession to?

A. Well, you understand we have been handling this thing for approximately ten years and gotten nowhere. Now, there are several different factions, you appreciate, there are several different factions among the railroads which causes that situation to exist. One of those factions had to make some of those concessions in order to bring about some coordination.

Q. In other words, Mr. Washer, the controversy among the railroads has resulted in the disturbance in the Indiana adjustment you now have before the Commission and you want the Commission to straighten it out, isn't that correct?

A. I don't understand that question.

Q. I will repeat it. The controversy between the railroads [fol. 1073] has resulted in the publication of this adjustment which you feel is not proper and has not been proper for more than ten years and you are, in effect, requesting the Commission to establish a normal freight adjustment so that you won't be bothered in the future, is that true?

A. No, I am not requesting the Commission to do anything except to approve what we published here.

Exam. Trezise: Is that all.

Mr. Cardy: That is all.

Exam. Trezise: Are there any further questions? (No response.) If not, you may be excused, Mr. Washer, and we will adjourn until 10 o'clock tomorrow morning.

(Witness excused.)

(At 4:20 P. M. June 18, 1943, adjourned to June 19, 1943, at 10:00 o'clock A. M.)

[fol. 1074] Morrison Hotel, Chicago, Illinois,
June 19, 1943.

Met, pursuant to adjournment, at 10:00 o'clock a. m.

Before: R. N. Trezise, Examiner.

Present: F. B. McElroy.

Appearances: As heretofore noted.

PROCEEDINGS

Exam. Trezise: All right, gentlemen; when you are ready, let us continue.

J. E. FLANSBURG was sworn and testified as follows:

Direct examination.

By Mr. Hunter:

Q. Will you state your name, occupation, and business address, please.

A. J. E. Flansburg, general commerce agent, Chicago & North Western Railway Company, 400 West Madison Street, Chicago, Illinois.

Q. And how long have you been general commerce agent of the North Western Railway Company?

A. About ten years.

Q. Mr. Flansburg, the North Western Railway Company [fol. 1075] is in the process of reorganization under Section 77 of the Bankruptcy Act, and Charles M. Thomson is trustee in possession and operating the property, is he not?

A. Yes, sir.

Q. And has been since on or about July 1, 1935?

A. That is correct.

Q. Will you state the duties of your position as general commerce agent?

A. Well, I have to do with testifying in all cases involving freight rates, state and interstate, in the territory

served by the North Western Railway, and in charge of consideration of informal reparation cases, undercharge cases, prior to the time suit is brought, and sometimes after. Generally have to do with everything pertaining to freight rate litigation of almost any kind or character.

Q. Your testimony that you are to present in this proceeding will be on behalf of all the carriers, and the North Western Railway Trustee specifically; is that correct?

A. That is correct.

Q. And that will be the nature of your testimony, Mr. Flansburg; I mean with respect to traffic aspects of the issues involved?

A. Yes, sir.

Q. You are familiar with the issues involved?

A. Yes, sir.

Q. You are not a cost accountant or an operating expert?

[fols. 1076-1081] A. No, sir.

Q. And have you reduced your testimony in statement form, copies of which have been distributed to all parties of record prior or at this hearing?

A. Yes, sir.

Q. If there is no objection, will you proceed to give your statement, Mr. Flansburg?

[fol. 1082] The Witness: A. Yes, sir.

Mr. Hunter: May that exhibit be marked No. 16 for identification, and received in evidence.

Exam. Trezise: Let *me* be marked and received.

(Respondents' Exhibit 16, Witness Flansburg, received in evidence.)

Exam. Trezise: This is off the record:

(Discussion outside of the record.)

The Witness: The Chicago & North Western Railway Company, hereinafter called the North Western, is primarily a destination carrier in Northern Illinois and Southern Wisconsin, and with a few exceptions does not serve the mines producing coal in Illinois, Indiana, and Western Kentucky. We are interested, however, in the measure of rates proposed in this readjustment to the destination territory involved.

The North Western is a party to, and had a hand in the proposal as reflected in the tariffs under suspension. It is

not our opinion that any outside method of transportation by truck or water, or the competition of gas or fuel oil will have any adverse effect upon the proposed rates; but, naturally, should any situation of this kind develop in the future, it can be given consideration at the time of such development, and is something which is separate and apart [fol. 1083] from the question as to whether or not the proposal in this case is in excess of reasonable maximum rates.

The North Western serves the state of Wisconsin as a whole, and transports Bituminous coal, in carloads, from these origin districts to destinations all over the state; and it is apprehensive that if the proposed schedules are not found to be justified it will represent a disturbing effect from a revenue standpoint upon the existing adjustment from these origins to Wisconsin beyond Beloit. In the case of Fairbanks-Morse & Company, Docket 25419, decided July 20, 1933, the Commission had before it the rates on Bituminous coal, in carloads, from mines in Illinois, Indiana, and Western Kentucky to Beloit, Wisconsin, as contrasted with the rates to Rockford, Illinois. At that time the rate to Rockford from Southern Illinois was $2.00 per ton for a distance of 352.1 miles, and to Beloit, Wisconsin, $2.75 per ton for a distance of 370.2 miles. In that report the Commission found that the $2.75 rate from Southern Illinois to Beloit was not unreasonable but was unduly prejudicial to Beloit and unduly preferential of Rockford to the extent it exceeded the rate to Rockford by more than 25 cents per ton.

Had the carriers at that time complied with the order by increasing the rate to Rockford from Southern Illinois to $2.50 per ton, an entirely different situation would have been presented than is before the Commission now. In no case since the Lake dock coal cases, wherein the Interstate [fol. 1084] Commerce Commission approved a rate of $2.75 per ton to Beloit has that rate ever been found unreasonable from Southern Illinois. In other words, had the rate of $2.75 per ton to Beloit been retained, as there was no finding that it was unreasonable, the existing rate to Beloit would be $2.95 per ton by adding to the original rate the general increases authorized, of 20 cents per ton since that time.

In the second report in the Fairbanks-Morse case the Commission again found the rates assailed to Beloit to be

not unreasonable but unduly prejudicial to Beloit and unduly preferential of Rockford to the extent they exceeded the rates to Rockford by more than 15 cents a ton. It will be noticed that the proposal in this case is considerably below what the rate to either Beloit or Rockford would be had the original rate to Beloit been maintained, and would be more in consonance with the existing rate to Janesville, Wisconsin, for a not much greater distance.

Mention has been made in this case of the decision of the Wisconsin Commission on Bituminous coal, in carloads, from the Lake Michigan docks to Wisconsin destinations; and in order that this record may show the findings of the Commission and the measure of the scale prescribed in that case to apply from the nearest dock, attention is invited to my Exhibit No. 16 which indicates for 300 miles shown in the report the rates prescribed by mileage blocks [fol. 1085] under date of March 21, 1939, compared with the Holmes and Hallowell Scale for the same blocks, and it will be noticed that the general average of the Wisconsin scale is 95.7 per cent of the Holmes and Hallowell Scale.

There was no general requirement in the order that the railroads were compelled to equalize rates from the docks, but it is true that certain equalizations have taken place due to commercial and carrier competition. It will be noted from the order, there were certain restrictions as to equalization; but it is the opinion of the company which I represent that such equalization as is in effect today is no different from that which prevails where a long line serving an origin group such as Southern Illinois desires to be on the same level of rates to a given destination as prevails over the short line from the same group to that destination.

Carrier competition also has its effect. The North Western serves docks at Kenosha, Racine, Milwaukee, Port Washington, Manitowoc, Sheboygan, Green Bay, and Marinette. The Milwaukee Railroad serves Racine, Milwaukee, Green Bay, and Marinette; and the Soo Line serves Manitowoc and Milwaukee. If, therefore, the varying dock operators are to be placed in a position to secure traffic to competitive points located on different railroads, and if the consumers are to have the opportunity *to* purchasing coal at more than one dock, it is natural for certain equalizations to take place. To Beloit, for example, directly in- [fol. 1086] volved in this case, the rates from Racine, Kenosha, Milwaukee and Sheboygan are the same; namely,

the rate from Milwaukee the nearest dock, but it is not equalized from Port Washington, Manitowoc, Green Bay, or Marinette. It is recognized that according to the destinations that may be selected, the equalization will result in a lower average level if all mileages from the equalized docks are taken into consideration; but it does not alter the fact that the scale prescribed by the Commission for application from the nearest dock does reflect an average of 95.7 per cent of the Holmes and Hallowell Scale. That the coal which originates on the Lake Michigan docks and moves to destinations in Wisconsin has previously paid a rail transportation charge from the mine to the lower Lake port in addition to a dumpage charge at the port from the dock to the vessel, the water charge from the Lake Erie port to the Lake Michigan port plus the cost of something from the boat to the dock subject to such degradation as may take place in transit.

Likewise, the exhibit shows the Midland Electric scale prescribed by the Commission from the Fulton-Peoria District to Iowa destinations in 232 ICC 5, and this shows a general percentage of the Holmes and Hallowell Scale for a distance of 300 miles of 94.2 per cent. The scales used are the basic ones shown in the report, and do not include any of the general increases. In making comparisons of this kind, I am not advocating that the rates within Illinois and [fol. 1087] to Beloit, Wisconsin, should be based upon a strict distance from each origin group, but it is presented for showing generally that the rates proposed are not unreasonable in comparison with the scales shown.

Mr. Hunter: We tender Mr. Flansburg for cross-examination.

Exam. Trezise: I have heard nothing, with the revisions that we have made today, that would stamp this as argumentative, to the extent that the Examiner would rule it out.

Mr. Hunter: We tender Mr. Flansburg for cross-examination.

Cross-examination.

By Mr. Wilkinson:

Q. May I ask a few questions, Mr. Flansburg——

Exam. Trezise: Mr. Wilkinson.

By Mr. Wilkinson:

Q. With reference to the decision in the Lake Dock coal cases, fixing a rate of $2.75 per ton from Southern Illinois to Beloit, that case also required maintenance of other rates from Southern Illinois to practically all destinations in Wisconsin, did it not?

A. All of them in Wisconsin, I would say.

Q. And that requirement was an increase in the rates which had been published by the carriers, was it not?

A. From Illinois, yes.

Q. From Southern Illinois?

A. Yes.

Q. And Southern Illinois was the only origin point involved in the Lake Dock coal cases, wasn't it?

A. That is right.

[fol. 1088] Q. Now, is it or is it not a fact, Mr. Flansburg, that following that decision in the Lake Dock coal cases all of the carriers serving origin groups in the other districts in Illinois, Central Illinois,—Belleville, Danville, and all the rest, and the origin groups in Indiana, increased the rates from those other origin groups in Illinois and all the origin groups in Indiana to all of these destinations in Wisconsin, including Beloit, the exact same amount in cents per ton as the increases required from Southern Illinois to those destinations.

A. That is right.

Q. And in that way maintained the differential which had previously existed?

A. Yes, sir.

Q. And that was a voluntary action on the part of the carriers, in which the North Western Railway acquiesced and went along with?

A. Yes, sir.

Q. Now, you have attached in your Exhibit No. 16, a mileage scale that applies from the Lake docks in Wisconsin to destinations in Wisconsin; and you stated in your evidence that there is a certain amount of equalization of those rates from the more distant docks; now, is that limitation, or is that equalization made up by applying the rate from the dock which is closest to the destination, and then all other of the docks in Wisconsin having the same rate, where the distance from the most distant of such docks

[fol. 1089] is not more than 50 per cent greater than the distance from the nearest dock?

A. That is right.

Q. In the working out of that plan you have given an illustration of rates from Racine, Kenosha, Milwaukee, and Sheboygan to Beloit, and you say that the Port Washington and Manitowoc docks are not included; now, under that equalization the rates from, we will say Sheboygan, which have been equalized to a dollar a ton, or whatever the rate may be to equal the Milwaukee, could the dock next north of Sheboygan claim an equalization with Sheboygan under the application of your equalization theory.

A. They could claim it; but under the equalization theory or the 50 per cent principle, if they would be beyond that they would not get it; at least, they would have to go to the Commission for it. But if they were within the limitation, they could ask for it and it would be up to the railroad to decide whether or not they would equalize.

Q. Then this is correct: That you take the nearest dock, and all of the docks that do not exceed more than 150 per cent of that nearest dock automatically get the nearest dock's rates.

A. No, it is not automatic in its operation. The railroad may or may not decide to equalize, even if it is within the 50 per cent equalization; because the equalization does not apply from all places to all destinations within the circuity limitation.

[fol. 1090] Q. It actually does apply; you have actually published your rates on the basis of equalization?

A. A few, from places of real consequence, where there is movement or contemplated movement.

Q. And have you made any computation to determine what the various percentages of the Holmes and Hallowell Scale or the Midland Electric Scale, or any other scale,—the actual rates from the docks to these destinations of any consequence may be?

A. No, I have not.

Q. These percentages that you show in here are merely a basic scale relationship to the other basic scales?

A. That is right; that is the maximum prescribed by the Commission for the distance hauled from the shore dock.

Q. Would that not be similar to computing the relationship, we will say for rates from the Springfield Group by taking the distance from the nearest point in the Springfield

Group, Bloomington, and computing the relationship for rates from Bloomington, any points in the Springfield Group?

A. If the rate was prescribed from Bloomington to distances within that destination group.

Q. Well, Bloomington is within the Springfield Group.

A. Yes.

Q. So it would come within it?

A. Yes, we look upon that dock adjustment up there as a [fol. 1091] group adjustment to the extent equalization takes place.

Q. Your real interest in this case, Mr. Flansburg, is to prevent the spreading of what you consider low level of rates in Illinois into Wisconsin?

A. That is right; and also we serve Northern Illinois.

Q. Yes, but primarily the interests of the North Western, you have battled for many years to keep intrastate Illinois level of rates from spreading into Wisconsin?

A. Yes, that is right.

Q. And you are more interested in that than you are in the measure of rates to Northern Illinois?

A. No, I do not think I draw a distinction between the two.

Q. You are interested in both?

A. That is right.

Q. As a destination carrier, the North Western is not particularly interested in securing a breakup of the old standard differential that formerly applied as between the Indiana groups and the Illinois groups to Northern Illinois, which was the same as that currently applied to Wisconsin?

A. No, we are not particularly interested in the groups, as long as the resulting rates are all right.

Q. When you find you get your division out of it, you do not care where the coal comes from, out of Illinois or Indiana?

A. That is right.

Mr. Wilkinson: That is all.

[fol. 1092] Exam. Trezise: Well, Mr. Flansburg, is this statement incorrect,—which is found in volume 251, page 193, the Fairbanks-Morse case: On that date, meaning May 1, 1939, the distant scale of rates on lump coal, and a lower one on fine coal, were prescribed for application to the shortest possible distance from the nearest dock to points

in Wisconsin, and the rates thus determined were authorized but not required to be applied from the other docks from which the distances were not more than 100 per cent greater than those from the nearest docks.

A. The only change, Mr. Examiner, in that was the change from circuity limitation of 100 per cent to 50 per cent in the last order; that is all, otherwise it is good. And it was correct at that time.

Exam. Trezise: Any further questions?

Mr. Morgan: Off the record.

(Discussion outside of the record.)

Exam. Trezise: Let us go back on the record, and take the question that we have right now; you cannot settle all cost rate generalities, so we are going to take the other question we have right here now: Shall we cross-examine Mr. Flansburg further? I think the Examiner would have to rule that now is the time to cross-examine; and unless there is something so abstruse, complicated and complex that it is impossible to understand, we will have to go ahead with [fol. 1093] his cross-examination now; unless that situation appears; it has not yet appeared to the Examiner's mind.

Mr. Morgan: You mean in respect to this particular exhibit?

Exam. Trezise: In respect to Exhibit No. 16; let us cross-examine. Mr. Stadell, do you have some questions?

Mr. Stadell: I have a few, yes.——

By Mr. Stadell:

Q. In answer to a question by Mr. Wilkinson, you stated that when the rates from Southern Illinois and Beloit and other points in Wisconsin were increased in compliance with the Commission's decision in the Lake Dock coal cases, that rates from other districts in Illinois and Indiana were increased at the same time, in the same amount; is that right?

A. That is right.

Q. Are you positive of that, Mr. Flansburg; have you checked that?

A. I have not checked it, but I have given that as my understanding of it.

Q. You are not positive they did go up at the same time, or that they ever went up in the same amount, are you?

A. Well, that is my understanding and remembrance; I did not check the tariffs.

Q. When was the last time that you checked it; your understanding is based upon what happened in 1924?

A. That is right.

[fol. 1094] Q. The rates prescribed by the Wisconsin Commission from the Lake Michigan docks and Lake Superior docks into Wisconsin to destinations in Wisconsin became effective May 1, 1939?

A. That is right.

Q. And the Commission prescribed that scale, and said that rates from the docks should be based upon the use of that scale and the shortest possible distance from the nearest dock to the destinations involved?

A. That is right. Quite often they are single lines, due to the location; but that is what the order requires.

Q. And then the railroads, after establishing the rate to a given destination, like Beloit we will say, from the nearest dock by use of the shortest possible distance and this scale, could then apply that same identical rate from farther distance docks to the same destination, so long as the distance from the farthest distant dock did not exceed the distance from the nearest dock by more than 100 per cent.

A. They could, subject to suspension.

Q. And you say that limitation now is 50 per cent, instead of 100 per cent?

A. Yes, sir.

Q. Is that limitation upon the distance, or the shortest possible route, or is it upon the distance over the tariff route over which the rate actually applies?

A. The limitation acts on the same principle as the scale [fol. 1095] is prescribed.

Q. And that is on the shortest possible distance?

A. That is right.

Q. So that it would be possible that the distance over the tariff route from the farther distant dock could be considerably greater than 50 per cent in excess of the distance?

A. It could be; but generally, I do not think it is; because primarily it is usually a single line operation; the short distance is usually single line.

By Exam. Trezise:

Q. And when you say shortest possible distance, you mean shortest possible distance via any connecting carriers?

A. That is right, over which cars may be transported without transfer of lading.

By Mr. Stadell:

Q. And that distance could be computed over a single line, the one that made the shortest possible distance, or could be computed over a combination of several lines?

A. That is right.

Q. Now, you stated that there was no provision in the Wisconsin Commission's order in that case that you had to equalize the rates from various docks?

A. That is right.

Q. It is true, however, is it not, that for twenty to twenty-five years prior to this decision the order of which you show in your Exhibit 16, that the Wisconsin Commission had by [fo]. 1096] orders in various cases required the rates from various docks to be equalized to destinations in Wisconsin?

A. That is right; and they used a higher scale.

Q. And the railroads generally, in complying with this decision which became effective May 1, 1939, have availed themselves of this privilege of equalizing the rates from the various docks?

A. Quite often, to the larger points of consumption; yes.

Q. It is quite general throughout Wisconsin, isn't it?

A. I would say the eastern half; the western half, no.

Q. You did it for the most part where the rates were equalized prior to that time, by order of the Wisconsin Commission?

A. Pretty well so, yes.

Q. Now, the Lake Dock coal cases which you refer to in your testimony, the Interstate Commerce Commission, you stated, prescribed a rate of $2.75 from Southern Illinois to Beloit; is that correct?

A. That is right.

Q. And that rate was prescribed to bring about a certain relationship between the Interstate rates from Southern Illinois and the Intrastate rates from the Wisconsin docks to destinations in that state?

A. It really operated as a minimum from Illinois, as a reasonable minimum from Illinois, compared with the then existing rate from the docks, yes.

Q. You say reasonable minimum; did the Commission [fol. 1097] prescribe it as a minimum?

A. They said that the rates from Illinois to those points should be to relieve certain prejudices.

Q. Prejudices against intrastate shippers?

A. That is right.

Q. For example, to Janesville, do you recall that they prescribed the $2.75 rate to bring about a spread of $1.17 per ton, Southern Illinois over the $1.58 rate from the docks?

A. I think that is the figure; the $2.75 applied from Illinois to all points in Southern Wisconsin on and north of the Madison line. Now, whether those distances would vary to the docks, I couldn't say.

Q. Now, since that time the rate to Janesville, up until a short time ago, was maintained at $2.75; and later increased to $2.90 by virtue of the increase in Ex Parte 115?

A. That is right; and subsequently changed under the General Motors order from Illinois.

Q. Well, it was subsequently changed in the Creamery Package case, was it not, to $2.79?

A. Well, I used the General Motors, because General Motors was specifically to Janesville, and Fairbanks-Morse was not.

Q. Well, the rate to Janesville today, however, is $2.79, or 4 cents per ton higher than was required by the order of the Commission in the Lake Dock coal case; is that right?

A. That is right.

[fol. 1098] Q. And by virtue of the Wisconsin Commission order in the Wisconsin case, included in your Exhibit No. 16, the rates from the dock as to Janesville were reduced May 1, 1939, 53 cents per ton on fine coal and 38 cents per ton on large coal, were they?

A. That figure is about right.

Q. So that the spread today, instead of being $1.17, is about $1.60, isn't it, Southern Illinois over dock?

A. That is right.

Q. The carriers were free to comply with that order, were they not, by reducing the rates from the Lake Michigan docks to bring about a spread of $1.17 versus Southern Illinois?

A. Not from my reading of the order; I do not say that we would. But I do not think the order read that way.

Q. The order was a preference and prejudice order?

A. That is right.

Q. Under Section 30?

A. No, I wouldn't say that it is; because as I recall it, they used to then existing rates from the docks as the measure to prescribe the rates from Illinois, and it was not the usual alternative publication.

Q. It uses then existing intrastate rates?

A. That is right; in other words, there wasn't anything in that order, as far as I could see, that there was any authority or prescription or order for the railroads to reduce the [fol. 1099] Michigan docks, because they took the rates within Wisconsin as they were; and I do not believe they specifically looked into the issue under Section 13 of the Act within Wisconsin. That is the way I recall it.

Q. There was nothing in that order that would have prevented the railroads from complying with it by reducing the rates from the docks?

A. Oh, no; we can always go below a reasonable maximum rate if we so desire, subject to suspension.

Q. And since that time that order in the Lake Dock coal cases has been set aside, has it not, by the Interstate Commerce Commission?

A. Yes, sir.

Q. Upon petitions filed by the Illinois-Indiana producers?

A. Yes, sir.

Q. And is no longer in effect now; rates from those Wisconsin docks were prescribed by the Wisconsin Commission, were they, as local rates?

A. Yes, sir.

Q. Now, in answer to a statement by Mr. Wilkinson to the effect that you probably were more interested in preventing the spread of the low level of rates in Illinois,——

A. I didn't say that.

Q. I know you didn't; I say he said that, and as I understood, you acquiesced in the statement.

[fol. 1100] A. No, I did not.

Q. I wondered if you understood it.

A. No, I said I was interested in both; that is, the rates to Northern Illinois as well as the rates into Wisconsin. He put it more strongly to Wisconsin than I agreed to.

Q. The portion of the statement that I was referred to was the portion referring to your interest in preventing the spread of the low level of rates in Illinois to Wisconsin; I wanted to amplify that. Are you more interested in preventing a spread of the still lower level of rates from Indiana to Wisconsin?

A. I am very much interested in that, the same as Illinois or West Kentucky, or any other origin field into that same state.

Q. Now assume, for the purpose of my question that it should be shown in this case that the average level of the rates from Wisconsin down to destinations in Wisconsin were lower, or is lower than the average level of the rates from Illinois to Northern Illinois, would you know of any justification for that situation?

A. You are starting out with an assumption that I doubt very much; but I will put it this way:——

Q. I say, for the purpose of my question, assume that, and then we will later submit proof.

A. Oh, relatively, the *d*ates within the two states, state and interstate, should not be materially far apart, whether you use distance or grouping.

[fol. 1101] Q. Treating them both like for like, group and distance; you said you look upon a dock adjustment as a group adjustment.

A. They should not be far apart, no.

Q. Well, if there should be any difference, the lower level should prevail in Illinois, should it not?

A. Well, under the class rate theory you could say yes, to that; but under the coal adjustment, I doubt it.

Q. Well, what would be the reason for having a lower level of rates on coal between points in Wisconsin than between points in Illinois?

A. From the transportation standpoint, I would say there wouldn't be any, except the difference north of the dividing line in the class rate territory.

Q. And the difference north of the dividing line would justify a higher level in Wisconsin than Illinois?

A. That is right, under that premise.

Mr. Stadell: That is all.

By Mr. Christianson:

Q. Mr. Flansburg, on page 4 of your exhibit No. 16, you show that percentage that the Wisconsin scale is of the Holmes and Hallowell Scale?

A. That is right.

Q. Column 3; is that a lump coal scale or fine coal scale?

A. Lump.

Q. The fine coal scale is generally about 15 cents a ton lower than lump coal?

[fol. 1102] A. Within Wisconsin it is roughly 85 per cent of the lump scale.

Q. In meeting competition as between different kinds of coal, is competition more severe on the industrial coal than on the so-called domestic coals?

A. I sort of hesitate to answer that, on the ground of competition; but I will say this: That there is more litigation and more evidence put in pertaining to fine coals than domestic coals.

Q. It is a fact that most industrial buyers buy their coal on the B. T. U. basis, or some other basis that is more refined, than the average domestic users?

A. I don't know how they buy it, but they buy a lot of it; and they are very jealous to secure as low rates as possible on fine coal.

Q. The real competition that the producers in Illinois or Indiana or Western Kentucky, for instance, would have to meet in Southern Wisconsin, competition as far as Lake dock is concerned, would be the lump coal rates, not fine coal rates; is that right?

A. No, I would not say that; I doubt that very much.

Q. In Column 5 you show the percentage relationship, 4 and 5, that the Holmes and Hallowell Scale is of the Midland Scale; I note you start the Midland Scale at 30 miles.

A. I started it there because that is where the Holmes and Hallowell started.

[fol. 1103] Q. In fact, there is no hauls from the Fulton County District, where this was prescribed, that meant into Iowa—much less than 50 miles.

A. That is right.

Q. And the using of the so-called 40-mile basis for the 30-mile rate block there, you get a higher percentage of the Holmes and Hallowell Scale than you normally would get, when you figure——

A. Oh, it would make a very small percentage or difference, but it would make a difference. That is automatic, I think.

Q. Mr. Flansburg, did you hear Mr. Nelson's cross-examination with reference to single line and joint line coal from the Fulton-Peoria District, having reference to Dixon on the one hand and Linwood on the other hand?

A. I did not hear all of it; I was not always able to hear.

Q. Mr. Nelson said that one of the reasons for a lower level of rates to Linwood was because the Chicago, Burlington & Quincy maintained single line rates from the Fulton County District to Linwood, whereas to Dixon they had joint line rates; does your railroad have a single-line from Fulton-Peoria, to Dixon?

A. I assume you mean from Mill Grove?

Q. That is correct.

A. Where we have trackage rights over the M. & St. L.; and we consider that single line, yes.

Q. Does your railroad serve the plant of Medusa Portland Cement Company without switching absorption from connecting line?

[fol. 1104] A. Yes.

Q. Do you believe that there ought to be a lower level of rates from the Fulton County District, or any other district—because of a single line movement as against a joint line movement?

A. Well, in this day and age I would say that single and joint line operate the same. The conditions under which they operate are variable, so it would be rather difficult to answer that directly.

Q. Do you know of any commodity that is as highly competitive in the sale of a product as cement, other than coal?

A. Well, I will put it this way: I don't know anything about cement competition, except this: That the Commission about fifteen years ago prescribed a cement adjustment in the Western Trunk Line territory practically letting everybody sit where they are; and we have not had a word of complaint since. So I assume that such competition as there is is based upon a stable rate structure.

Q. In the carriers' presentation of the transportation burden which they say that intrastate rates suffer, and specifically considering Dixon, Illinois as a point, as against an interstate point, would you say there was any burden

against interstate commerce in the Dixon rate from the Fulton County District, of approximately $1.50 for 120 miles as against a most competitive, in so far as the cement industry is concerned on Linwood, Iowa, where an Inter-
[fol. 1105] state rate prevails of $1.25 for 113 miles.

A. I would say not, on competition as between individuals, as you confined it; but I do think there is revenue discrimination, state versus Interstate there. I would not say that Dixon and the Linwood Cement people compete in the same territory. You have La Salle, Mason City, and half a dozen others; and they all sell in each other's territory; and I do not think the fate has anything to do with that.

Mr. Christianson: I think that is all.

By Exam. Trezise:

Q. Now, before we get too far away from this point, Mr. Flansburg, there is no 13th Section proceeding here pending with respect to the Wisconsin dock rates; do you know that?

A. Oh, yes; I really have known that for some time.

Q. There are no rates from the Wisconsin docks that are subject to any Wisconsin orders whatsoever, that apply to Rockford, Illinois?

A. That is right.

Q. There are no rates involved in this proceeding where there is any proposal whatsoever to change the rates to Beloit from any Illinois group, is there?

A. Yes.

Q. Which one?

A. From the Indiana groups to Beloit.

Q. I said Illinois groups.

[fol. 1106] A. I beg your pardon; the answer is no.

Q. Nor Kentucky?

A. No.

Q. And the only ones are from Indiana, is that right?

A. That is right.

Q. All right; I wanted anybody that read this record to know that these Wisconsin docks haven't anything to do with this, except with respect to possibly these Indiana origin groups, as far as the proposal is concerned to change any rates.

A. There isn't any proposal to change any rates within Wisconsin; but I rather think that the docks may participate affirmatively in this case; that is, in connection with your last statement that they might have no interest.

Q. But if there is a remote issue, or a direct influence of the dock rates in such points as Beloit, and Rockford being close to Beloit, the effect of those rates would be felt at Rockford; the effect of the low rates from the docks to Beloit would be felt at Rockford?

A. I doubt that, because the docks do not have any rate to Rockford, Illinois, now. That is the subject of a formal compliant that was just filed the other day.

Q. And what you mean is they would not ship coal down to Beloit and then truck it down to Rockford, or anything of that kind?

A. That is right; because they do not ship any to Beloit.

Exam. Trezise: All right; thank you. That makes it a [fol. 1107] little bit clearer to the Examiner. Have you some questions, Mr. Morgan?

Mr. Morgan: I have a series of questions.

Exam. Trezise: Before you examine, would you rather have this other witness go ahead?

Mr. Morgan: The only point I raised, it is a question of the Examiner's deciding where convenience rests more heavily. This witness will take up more than the morning.

Exam. Trezise: How long will you take, Mr. Dixon?

Mr. Dixon: An hour and a half on direct.

Exam. Trezise: Off the record.

(Discussion outside of the record.)

Exam. Trezise: Go ahead, Mr. Morgan.

Mr. Morgan: You mean to go ahead with this witness?

Exam. Trezise: Yes; go ahead with your examination, and we will reserve about fifteen minutes for the Southern. Off the record.

(Discussion outside of the record.)

Mr. Boden: Could I have about two questions?

Exam. Trezise: Go ahead.

By Mr. Boden:

Q. In Wisconsin state rates, the equalization of the docks is not applicable in all of their distances, are they?

The Witness: A. No.

Q. That is, the short haul, there is no equalization regardless of the amount?

[fol. 1108] A. You mean the short haul from the nearest dock?

Q. To approximately 40 of 50 miles from the nearest dock.

A. Within that short distance, no; that is a carry-over from the old adjustment.

Q. In speaking of the equalization of docks at Janesville, does Green Bay have the same rate now as Milwaukee to Janesville or Beloit?

A. No.

Mr. Boden: That is all.

Mr. Bather: I have a few questions.

Exam. Trezise: All right, Mr. Bather.

By Mr. Bather:

Q. On page 2 of your prepared statement you referred to the decision, the original decision of the Commission in the Fairbanks-Morse case, in which the Commission found that the rate to Beloit should not exceed the rate to Rockford by more than 25 cents; now, you did publish, did you not, rates from Southern Illinois and the other groups on that basis by reducing the rate Southern Illinois to Beloit to $2.25?

A. That is right.

Q. On the same page you assume that had the carriers complied with the order, as they are attempting to do in these proceedings, the rate to Rockford could have been increased to $2.50?

A. That is right.

Q. That is purely an assumption; you don't know whether the Commission would have approved that rate?

[fol. 1109] A. I have no idea what the Commission would do; all I stated is what could have been done by the railroads.

Q. That is what you assume could be?

A. No, it could be done, always subject to suspension.

Q. But it was not done?

A. No.

Mr. Bather: That is all.

Exam. Trezise: We will excuse Mr. Flansburg, subject to cross-examination.

Mr. Morgan: The witness will be available?—I stated that I would have an hour or more just on preliminary; I have only seen the exhibits; I assume the witness will therefore be subject to recall at a convenient time in the hearing. What I meant, when it was convenient during the procedure, or the hearing. There are several witnesses some of the gentlemen desire to put on; and the middle of the week, or towards the end of the week probably,——

The Witness: As far as I know, I will be here all next week.

Exam. Trezise: All right; with that understanding,——

Mr. Wilkinson: May I ask just one question?

Exam. Trezise: Mr. Wilkinson?

By Mr. Wilkinson:

Q. This distance of 370 miles from Southern Illinois to Beloit which you show in your evidence, is that the distance that was referred to in the Fairbanks-Morse case?

[fol. 1110] The Witness: A. Yes.

Q. That is not a distance that is shown in the record here?

A. No.

Mr. Wilkinson: Thank you.

(Witness withdrawn.)

Mr. Dixon: Mr. Examiner, may we have a few minutes recess, to get these exhibits distributed.

Exam. Trezise: All right; have a short recess.

(A short recess was taken.)

(Respondents' Exhibit 17, Witness Dilli, marked for identification.)

Exam. Trezise: All right, gentlemen; when you are ready.

Carl W. Dilli, was sworn and testified as follows:

Direct examination.

By Mr. Dixon:

Q. Will you state your name and connection with the Southern Railway Company.

A. My name is Carl W. Dilli; I am assistant to the freight traffic manager of the Southern Railway System, Washing-

ton, D. C. I have been employed by the Southern Railway System for the past twenty-five years, the principal part of that time in the handling of freight rates and other related matters.

Exam. Trezise: Is this the statement that you said you would put into the record today?

Mr. Dixon: Yes, I would like to put it into the record——

[fol. 1111] Mr. Morgan: The only point I am interested in is reserving the rights of objection and motions, following the reading of it in the record.

Exam. Trezise: Well, Mr. Dilli will be here next week.

Mr. Dixon: No, not next week, Mr. Examiner. I would like to have it understood that he will be here at the subsequent hearing.

Exam. Trezise: I think that will be satisfactory. Any objection to that? (No response.) Very well; then it will be understood that Mr. Dilli will be at the subsequent hearing, which seems to be necessary at this time that we will have to have at a later date, a subsequent hearing to complete the testimony.

Now, if you will introduce your exhibits, I believe that will be complete.

Mr. Dixon: Yes, I would like to.

Exam. Trezise: Exhibit No. 17 is received.

(Respondents' Exhibit No. 17, Witness Dilli, received in evidence.)

Exam. Trezise: What is that exhibit?—You might just mention what it is.

The Witness: A. Mr. Examiner, on the first and second page there are twenty-five numbered lines showing what it is. In a general way, it is a statement of the present and proposed rate, and some maps and exhibits, things of that kind——

[fol. 1112] Mr. Dixon: Then we will proceed, and put in the statement:

By Mr. Dixon:

Q. Have you studied the matters here involved with a view of testifying here today?

A. I have.

Q. You have some exhibits numbered 17, to file in this proceeding?

A. Yes.

Q. Were those exhibits prepared under your supervision or direction?

A. They were.

Q. Are they true and correct to the best of your knowledge?

A. They are.

Q. Give a general description of southern Railway Lines, particularly in Illinois and Indiana.

A. The Southern Railway System radiates all over Southern territory, covering thirteen states and the District of Columbia. As to Illinois and Indiana in particular, the Southern Railway operates a main line of railway north of the Ohio River extending from Louisville, Kentucky through Southern Indiana and Illinois to East St. Louis, Illinois. St. Louis, Missouri is reached through the Terminal Company at that point. There are several branch lines radiating from Huntingburg, Indiana, one to the northeast extending to French Lick, Indiana, and three south of Huntingburg extending to Cannelton, Rockport and Evans-[fol. 1113] ville, Indiana. The particular origin territory involved in this proceeding, that is, the territory serving coal mines, is on the main line in the neighborhood of Princeton, Indiana, a point 113 miles west of Louisville; Boonville, Indiana, a point 31 miles south and west of Huntingburg, Indiana; and Belleville, Illinois, a point on the main line 14 miles east of East St. Louis. Those points are representative of the mine groups, familiarly known as Princeton-Ayrshire, Boonville and Belleville.

The Southern Railway does not serve any part of the destination territory involved in this proceeding.

Q. What is the most important tonnage on the line of the Southern Railway in Illinois and Indiana you have just described?

A. The Line is one of comparatively light traffic density as compared with other main lines of the Southern Railway System. It originates very little tonnage with the exception of coal. It does originate a substantial quantity of coal. With the exception of Louisville and St. Louis, there are few populous cities located on this line, which, of course, has a tendency to reduce its traffic density. The coal tonnage is a very important tonnage to this line, contributing largely to its maintenance.

Q. Aside from the Princeton, Boonville and Belleville groups, does the Southern Railway serve any other mine groups involved in this proceeding?

A. No, it does not.

[fol. 1114] Q. As to the Belleville, Illinois Group in so far as the Southern Railway is concerned, is it presently producing coal in any substantial volume?

A. No, it is not.

Q. Explain the interest of the Southern Railway in this proceeding.

A. Our immediate interest in this proceeding is the disruption that has been proposed between the Princeton-Boonville groups and other groups. Specifically, I have reference to the differential as between Princeton and Boonville groups, on the one hand, and the Linton-Sullivan group on the other hand and the Princeton and Boonville groups versus Southern Illinois. I shall explain that in more detail later on when I show the situation in exhibit form. I might add here that we are not so much concerned with the inherent rate level as we are in the question of the differentials.

Q. In other words, you want to maintain the present relationship as between mines on the Southern Railway and those in the Linton-Sullivan group which has been in effect for many years?

A. That is correct.

Q. Before dealing with the exhibits that you have prepared for this case, I would like to ask you if the question of differentials as between the Princeton and Boonville groups on the one hand and the Linton-Sullivan group on the other hand has heretofore been given consideration by [fol. 1115] the Interstate Commerce Commission?

A. The Interstate Commerce Commission has given consideration to this question, the latest decision being that in I&S Docket 4362, decided April 10, 1939, reported at 232 ICC 151 finding 2 of that decision as shown on page 170 of the report, found not justified a differential in excess of 7 cents, Princeton over Linton-Sullivan and 3 cents Boonville over Princeton. At page 167 of the same report, a Commission refers to the fact that in the Illinois Coal Traffic Bureau Case, reported at 204 ICC 225, the same question was there before them.

Q. I believe you are now ready to proceed with filing your exhibit 17 consisting of 25 pages. Will you take up that exhibit and explain the pages as you go along?

A. Page 1 is a map showing the various mine groups that make up the so-called Illinois-Indiana Coal Fields. Shown in red is the Princeton Group. The Boonville Group is shown in green. These are the groups in which the Southern Railway is particularly interested. Our belief is that should differentials greater than those approved in I&S 4368 be made effective, it would result in freezing out these mine groups to the territory here involved.

The base group for the present rates to the territory here involved is Southern Illinois.

From the Springfield and Brazil-Clinton Groups the rates are 30 cents under Southern Illinois.

[fol. 1116] From the Linton-Sullivan Group, the rates are 10 cents over Brazil-Clinton.

The Princeton Group is 7 cents over Linton-Sullivan and Boonville is 3 cents over Princeton, or 10 cents over Linton-Sullivan.

The above basis would result in rates from Princeton being 13 cents under Southern Illinois.

Page 2 is a map of the several carriers serving the destination territory here involved, shown by the several different colors. The starting point and the stopping point to which rates are under suspension commences and ends with the color designating the line of the several carriers. Illustrative of this is the Chicago and Great Western, shown by the brown coloring as commencing at St. Charles and ending at South Freeport.

Page 3 is a chronological statement of rates on coal from mines in the Brazil-Clinton; Linton-Sullivan; Princeton-Ayrshire and Boonville Groups to Beloit, Wisconsin and Rockford, Illinois. By referring to the columns under the heading, "Differentials" as to Beloit, it will be noted that during the majority of the time for the period April 1, 1913 through the present that the differential Princeton over Linton-Sullivan has been 7 cents per net ton. Where the differential has been in excess of 7 cents that was brought about by reason of the advance under Ex Parte 74 and reduced rates of 1922, however the normal differentials were later restored. As to the differential of 3 cents, Boonville [fol. 1117] over Princeton, it has been in effect since May, 1919. The latter adjustment was sponsored by the South-

ern Railway to enable our operators in the Boonville Group to more nearly compete with other mine groups in this territory. Prior to that time there was little if any movement from Boonville. What has been said with respect to Beloit is generally true as to Rockford, Illinois.

It will be observed that opposite the suspended rates shown at the bottom of the page we have shown by a symbol @ was not published for account of the Southern Railway. As previously explained, the Southern Railway did not publish the same rate from Princeton as here under suspension for account of other lines in the Princeton Group. Had we done so the spread in the rate Princeton over Linton would have been the difference between a single line rate of $2.20 from Linton and $2.39 from Princeton, or 19 cents, whereas we now have and have always contended that the differential should not be in excess of 7 cents. To have increased the differential from 7 to 19 cents would have been contrary to what the Interstate Commerce Commission found a proper differential in I&S Docket 4368. With a spread of 19 cents Princeton over Linton, it would, we believe be impossible for our operators to compete with mines to the north.

Pages 4 to 6 show the present and suspended rates as published by the individual lines serving the Linton-Sullivan Group and the individual lines serving the Princeton [fol. 1118] Ayshire Group to the destinations shown. The selected origin carriers are representative ones in the groups. Also shown are the differences Princeton-Ayrshire over or under the Linton-Sullivan groups as the case may be. Here again we have also shown the difference as between the carriers serving the Princeton-Ayrshire Group and those serving the Linton-Sullivan Group.

Page 4 covers destinations on the Milwaukee. Page 5 covers destinations on the North Western, and Page 6 covers destinations on the Illinois Central and Chicago Great Western.

Page 7 is a statement of rates on coal from mines on the several lines that go to make up the Linton-Sullivan and Princeton-Ayrshire Groups to representative points involved, with the differentials Prince-Ayrshire over Linton-Sullivan. It will be noted that the rates from C. M. St. P. & P. and Illinois Central mines have been shown in different columns than the rates from mines on other lines that make up the Linton-Sullivan Group. Likewise it will be noted

that we have shown opposite the destinations, rates for the different carriers serving the destination points.

The reason for showing the rates separately from C. M. St. P. & P. and Illinois Central, as well as rates on the several lines at the destination points, is because the carriers that serve the origin groups and the destination points have different rates from carriers serving the mine groups and not reaching the destination point. To illustrate, the [fol. 1119] C. M. St. P. & P. has mines located in the Linton Group and likewise reach Rockford, Illinois. The present rate to Rockford for the single line haul of the C. M. St. P. & P. is $1.90. The suspended rate is $2.05. The rate from C. M. St. P. & P. mines in connection with the Illinois Central or C. & N. W. is $2.02 at present and $2.17 under the suspended basis. The Illinois Central also has mines in the Linton Group and likewise serve Rockford, Illinois. The rate via the direct route of the Illinois Central is the same as the C. M. St. P. & P. rate, or $1.90 at present and $2.05 suspended. The rate from Illinois Central mines to Rockford C. M. St. P. & P. or C. & N. W. delivery is $2.02 at present and $2.17 under the suspended basis.

Thus it will be seen that where a carrier serves both the origin and destination we have single line rates. In the case of carriers not serving the mine group joint rates apply, which are higher than the single line rates. What is true in respect to Rockford is generally true in respect to other destinations that are reached by carriers also serving the mine groups.

At this time I would like to make this further observation:

The Milwaukee has mines located on its lines just east of of Elnora, Indiana, in the direction of Bedford, Indiana. These mines are immediately north and in close proximity to mines in the Princeton Group, as can be readily seen by the map numbered page 1 of this exhibit.

This Commission at page 168 of its decision in I & S [fol. 1120] Docket 4368, 232 ICC 151, referred to the fact that the Milwaukee did not propose to increase the then existing differential from these mines of 7 cents over Linton-Sullivan and went on to state that there was no sufficient reason why these mines should not continue to take the same differential as was established from the Princeton Group as a result of its findings in that case.

The Milwaukee's Tariff ICC B-7246 under Item 1 provides for a differential of 7 cents over rates from the Linton

Group to all stations on the Milwaukee and a number of its short-line connections.

Under the revision that was suspended resulting in the proceedings now at hand, the Milwaukee did not increase the differential from these mines so that the situation in respect to mines in the Princeton Group of the Southern Railway to Beloit, Wisconsin, is no different than that from the mines on the Milwaukee east of Elnora.

Pages 8, 9 and 10 show the present and suspended rates as published by the individual lines serving the Southern Illinois Group and the Princeton-Ayrshire Group. The selected carriers are representative ones in the groups. Also shown are the differences Princeton-Ayrshire over or under the Linton-Sullivan Group as the case may be. Also shown is the difference in rates as between the carriers serving the Princeton-Ayrshire Group and those serving the Southern Illinois Group.

[fol. 1121] Page 11 is a statement of rates on coal from the Linton-Sullivan and Princeton-Ayrshire groups, with the differential Princeton-Ayrshire over Linton-Sullivan, to points in Wisconsin, Illinois and Iowa. The first and last blocks of figures are points of destination in Wisconsin, Illinois, and Iowa not involved in this proceeding but in contiguous territories. The middle block of figures, that is the block commencing with Beloit, Wisconsin, and ending with Geneva, Illinois, is a list of representative points to which rates are under suspension in this proceeding.

Here again it should be explained that while the exhibit does not so indicate, the Southern Railway did not publish the rate from Princeton to Beloit of $2.39, here under suspension for account of other lines. To do so would have meant a spread of 19 cents as between Princeton on the one hand and Linton-Sullivan on the other. This spread is the difference between the rate of $2.20 under suspension from Linton-Sullivan, applicable for single-line hauls, that is, carriers serving both the mine group and the destination point, and the suspended rate of $2.39 from Princeton.

It will be noted from the exhibit that with few exceptions the differential to destinations not involved in this proceeding, but adjacent thereto—that is to say, those in the first and last blocks of the exhibit—is 7 cents Princeton over Linton-Sullivan; whereas to destinations involved in this [fol. 1122] case, as shown in the middle block of figures, the differentials range from 4 to 19 cents. The differentials to

the destinations involved in this case that are in excess of 7 cents is brought about by reason of the fact that there are two lines of rates in effect from the same mine group to the same destination. That is so because from the Linton-Sullivan group there is in effect both single-line rates and joint-line rates—that is to say, there are rates in effect where the same railroad serves both the origin mine group and the destination. Illustrative of this is the case of Rockford, Illinois. The rate from Linton-Sullivan for single-line hauls is $1.90, where as the rate from Princeton is $2.09, resulting in a differential of 19 cents. The joint-line rate from Linton-Sullivan is $2.02 with a rate from Princeton of $2.09, or a spread of 7 cents.

Page 12 is a chart showing representative destinations to which the rates are under suspension and points adjacent thereto, with the present and suspended differentials Princeton over Linton-Sullivan.

The destinations to which the rates are under suspension are shown in red, and the adjacent points to which the rates are not here involved are shown in green.

The present differentials are shown under the capital letter "P", and the suspended differentials are shown opposite the capital letter "S". Where two numbers are shown opposite the letters "P" and "S", it means that the differ- [fol. 1123] ential differs depending on the mines served by particular railroads. For example, to Rockford, Illinois opposite the capital letter "P" is shown the number 7 which means that the present differential Princeton over Linton is 7 cents. Opposite the capital letter "S", the figures 7 and 19 appear which mean that the rates under suspension from Princeton range from 7 to 19 cents over the rates from Linton.

Here again as to Beloit, we have not shown that the differential Princeton over Linton would be 19 cents had the Southern Railway published the suspended rate of $2.39. What has been shown is the spread in the rates in so far as Southern Railway is concerned.

The purpose of the exhibit is to show in a geographical way that the territory involved in this proceeding is completely surrounded by points in territories to which the differentials are substantially less than those under the suspended basis, and to bring into view the consumer interest that may be affected by the proposal. By consumer

interest, I mean the consumer interest that was referred to in the Commission's Decision in 204 ICC 225-240.

Pages 13, 14, and 15 show the rates to points in Illinois, Wisconsin and Iowa not involved in this proceeding from Southern Illinois, Brazil-Clinton, Linton-Sullivan, Princeton-Ayrshire, and the Boonville Groups to destinations having a population of 5,000 or more. In addition to the [fol. 1124] present rates, the statements also show the differences Princeton under or over Southern Illinois and the differential Princeton over Linton and Boonville over Princeton.

As to Illinois, the selected destinations are generally located in Northern Illinois. The statement was confined to that territory by reason of the fact that to the other section of Illinois rates are not provided from mines in the Princeton-Boonville Groups. As to Wisconsin and Iowa, I think it is safe to say that the statements include practically all points having a population of 5,000 or more. A review of these pages, that is, 13 to 15 clearly shows that, with few exceptions, the differentials Princeton over Linton and Boonville over Princeton are 7 and 3 cents respectively. Thus it is apparent that most of the territory to which rates are under suspension are completely surrounded by destinations where the spread Princeton over Linton is 7 cents.

Pages 16 to 23, inclusive, show in chronological order the rates just prior to those suspended by I&S 4368; rates that were published but suspended in I&S 4368; rates approved by the Commission as a result of formal hearing of I&S 4368; the rates that became effective November 15, 1937 as a result of Ex Parte 115, which rates are still in effect; and the rates under suspension in the instant case. The rates shown on these pages are to selected representative destinations. A review of the rates published to become effective August 2, 1942, shown opposite Lines 21 to 25, [fol. 1125] inclusive, but suspended by I&S 5139, reveals that such rates were not published in accordance with the findings of the Commission in I&S 4368, in that, in most instances the differential as between Southern Illinois and Linton versus Princeton are different from those resulting from rates found proper in I&S 4368.

While the exhibits speak for themselves, it is perhaps well if I explain somewhat further in detail.

Taking page 16 which covers the destination of Beloit, Wisconsin, it will be noted that I have shown the rates

published by the different carriers going to make up the several groups indicated on the exhibit, and the difference as between Princeton, on the one hand, and Southern Illinois and Linton on the other. Taking the first block of figures, that is, the rates in effect prior to I&S 4368, it will be noted that Princeton was 13 cents under Southern Illinois, and 7 cents higher than Linton.

The suspended schedules under I&S 4368 shown opposite lines 6 to 10, provided no difference as between Southern Illinois and Princeton, while from Linton the suspended schedules would have increased the differential from 7 cents to 20 cents, which, of course, would have worked to the detriment of the mines located in the Princeton group in that their advantage of 13 cents as compared with Southern Illinois would have been completely extinguished, while the advantage that Linton would have enjoyed would have [fol. 1126] been increased from 7 cents to 20 cents.

In the third bracket of figures, covered by Lines 11 to 15, are shown the rates approved by the Commission to I&S 4368. It will be noted here that the differences as between Princeton, on the one hand and Southern Illinois and Linton on the other hand, were the same as those in effect prior to I&S 4368.

As to the rates that became effective November 15, 1937 and presently in effect, the only difference is the increase authorized by the Commission in Ex Parte 115, which, of course, makes no change in the differentials as of the present versus that of prior to I&S 4368.

Coming now to the schedules under suspension in the instant proceeding, which are covered by the last block of figures, Lines 21 to 25, we find that there has been a material disruption of the differentials. Whereas the difference Princeton under Southern Illinois has all along been 13 cents, it is now proposed to make that difference 1 cent and 13 cents, respectively. These latter figures are brought about by the fact that the Milwaukee proposed no change from Linton, while other lines serving the Linton Group, that is, C. & E. I., Illinois Central and New York Central propose to increase the rate from $2.20 to $2.32.

As to the Princeton-Ayrshire Group under the suspended schedules, it is true that the lines serving the Princeton Group other than Southern Railway published rates that [fol. 1127] would reflect the usual differential of 7 cents

Princeton over Linton, but in doing so they actually increased their spread 19 cents because the Milwaukee proposed no change in their existing rate from Linton of $2.20.

As to rates from the Princeton Group of the Southern Railway we declined to establish the proposed rate of $2.39, for to have done so would have resulted in increasing our rate from $2.27 to $2.39 as compared with that published by the Milwaukee from the Linton Group of $2.20, or 19 cents.

While it is true that to many of the points here involved we have in the past participated in rates reflecting a greater differential than 7 cents Princeton over Linton, that does not justify our continuing to do so, nor does it justify a continual spreading of such situation, and we feel that this is the proper time for readjustment in the rates so that Princeton shall not exceed Linton by more than 7 cents.

Page 24 shows tariffs that have been used to determine the rates shown in preceding pages of the exhibit.

Page 25 contains a list of excerpts from decisions of the Interstate Commerce Commission in which it has been held that a group adjustment of long standing should not be disturbed except upon a very clear and convincing showing of its unlawfulness. The exhibit is filed as information. To this list should be added the decision of the Interstate Commerce Commission in I&S Docket 4368.

[fol. 1128] Q. From the study you have made of this case and your familiarity with other coal rate adjustments and movements, what effect, if any, would a disruption in the differential relationships have upon the tonnage from mines served by the Southern Railway here involved?

A. As previously pointed out in so far as the rates from mine groups on the Southern Railway, that is, Princeton & Boonville to Beloit, are concerned, there has been no change. In other words, Southern Railway did not make the same change as was made by certain other lines serving the Princeton group. However, we do feel that should the differential of 7 cents, Princeton over the Linton-Sullivan group, be increased to 19 cents, that it would result in a shift on tonnage to mines more favorably treated. It is well here to state that should the differential to the territory here involved be increased, it undoubtedly would ultimately result in increasing the differential to points in other territories where there is a very substantial movement from our

mines. Should that occur, the ultimate result, in my opinion, would be a substantial diminution in the operations at our mines. In addition we desire to maintain the existing differentials to the territories north and west of the territory here under consideration that otherwise may be affected should the differentials be readjusted as a result of this proceeding.

Q. Of course you cannot make any definite forecast as [fol. 1129] to what might happen, but that is your opinion?

A. That is correct.

Exam. Trezise: Is that all on direct?

Mr. Dixon: For today; yes, sir.

Exam. Trezise: Very well; you may be excused. We will adjourn to 10:00 o'clock Monday morning.

(Witness withdrawn.)

Exam. Trezise: 10:00 o'clock Monday morning.

(At 12:00 o'clock noon, June 19, 1943, adjournment until 10:00 o'clock a. m. Monday, June 21, 1943.)

[fol. 1130] Morrison Hotel, Chicago, Illinois,
June 21, 1943.

The hearing was resumed pursuant to adjournment, at 10:00 o'clock, a. m.

Before: R. N. Trezise, Examiner.

Present: W. C. Kaylor, Illinois Commerce Commission.

Appearances: As before.

Proceedings

Exam. Trezise: All right, gentlemen, when you are ready, let us continue.

Mr. Biaett: If the Examiner please, I will call Mr. O. E. Pearson.

O. E. Pearson was sworn and testified as follows:

Direct examination.

By Mr. Biaett:

Q. Will you state your name for the record, please.

A. O. E. Pearson.

Q. What is your position, Mr. Pearson?

A. Assistant superintendent of transportation, Chicago, Burlington & Quincy Railroad.

Q. What are your duties in that position?

[fol. 1131] A. Well, to look after the general movement of traffic.

Q. Are you familiar with the transportation of coal from the mines in Illinois served by the Burlington to points in Northern Illinois and also to points in Eastern Iowa?

A. I am.

Q. Are you familiar with the operating conditions surrounding the transportation of coal from the Illinois mines served by the Burlington to points in Northern Illinois and Eastern Iowa?

A. Yes, sir.

Q. At what points in Illinois does the Burlington serve coal mines?

A. We have two general districts, the Southern Illinois field and the so-called Fulton County field, which is in Central Illinois.

Q. Does the Burlington serve coal mines at other points in Illinois also?

A. We have a mine at Alpha, which is separated from that other district, a small mine, and there is also a mine at Rushville, Illinois, which is not in the Fulton County District.

Q. Does the Burlinton also serve the Centralia Group?

A. Yes, sir.

Q. In transporting coal to Northern Illinois, does the Burlington have a single-line haul from these mines to Rochelle, Rockford, Polo, Sterling, and Amboy?

A. I am not sure I understand your question about the [fol. 1132] single-line haul.

Q. On coal originated by the Burlington at these mines, can that coal be handled all the way through to destination via the Burlington to Rochelle, Illinois?

A. Yes, sir.

Q. And to Rockford, Illinois?

A. Yes, sir.

Q. And Polo, Illinois?

A. Yes, sir.

Q. And Sterling, Illinois?

A. Yes, sir.

Q. And Amboy, Illinois?

A. Yes, sir.

Q. Now, this coal from those mines served by the Burlington, can that also be handled by that carrier to Savanna, Illinois, Dubuque, Iowa, Clinton, Iowa, Davenport, Iowa, Moline and Rock Island, Illinois?

A. Yes, sir.

Q. Are you familiar with the assembling and gathering service in the Southern Illinois field on the Burlington?

A. I am.

Q. How many concentration points are there in that field on the Burlington?

A. We have four general concentration points in the Southern Illinois field. Do you want me to name them?

[fol. 1133] Q. Yes, will you name them, please.

A. Christopher, Herrin, Zeigler, and West Frankfort.

Q. Will you describe the assembling of coal from the mines to such concentration points, please.

A. The assembling is done by switch engines in each of the districts, who take the empties out to the mines and bring the loads back to these four concentration points.

Q. At what distance from these concentration points are the mines located?

A. Well, in the Christopher District there is an area seven and a half miles north and south by five miles east and west, with three mines in the district.

Herrin is an area of five miles north and south by three miles east and west. Zeigler is an area one and a half miles north and south by one mile east and west. West Frankfort is an area of three and a half miles north and south by five miles east and west.

Q. Now, after this coal is assembled at these concentration points, where does it next move?

A. It moves to Centralia.

Q. How is that operation performed?

A. We run turnaround trains from Centralia that take the empties down into the mine district and pick up the loads and take them back to Centralia.

Q. Will you describe the switching of the mines in the [fol. 1134] Centralia Group?

A. There are two mines there and they are served by the Centralia switch engine.

Q. And all coal from Southern Illinois and from the Centralia mine is brought into the Centralia yard, is that correct?

A. Right.

Q. What type of classification is made at Centralia?

A. They classify the coal that goes into the St. Louis District and any short-haul coal, that is all the switching out that is done at Centralia.

Q. On shipments destined to points in Northern Illinois or Eastern Iowa, where does the coal move from Centralia?

A. It moves to Galesburg, Illinois.

Q. In this connection, will you please describe the serving of the mine located at Rushville, Illinois?

A. Rushville is on a branch line out of Vermont, Illinois, and the coal is moved into Vermont on the regular freight train, the regular scheduled train. At Vermont it is picked up by these Galesburg coal runs from Centralia.

Q. Mr. Pearson, what type of power or locomotive is generally used from the Southern Illinois field to Galesburg?

A. It is the Santa Fe type locomotive, which we designate as an M-2, with a tractive effort of 81,600 pounds.

Q. What is the tonnage rating of that locomotive from Herrin or West Frankfort to Galesburg?

[fol. 1135] A. Approximately 6500 tons. They sometimes handle a little more than that, but we show it as 6500.

Q. Now, what is the ruling grade on the line from Herrin or West Frankfort to Galesburg, Illinois?

A. Three-tenths of one per cent, approximately.

Exam. Trezise: When you say the ruling grade, that question has come up several times, and you mean what?

The Witness: I mean the maximum grade that they have to contend with in moving the coal through that territory.

By Mr. Biaett:

Q. Now, Mr. Pearson, will you describe the assembling of coal in the Fulton County District?

A. The Fulton County mines are on two pieces of track there, from Yates City to Lewistown, and then a branch that runs from Lewistown to Fairview; and the coal from the Fairview branch is moved into Lewistown and turn-around trains from Galesburg operate to Lewistown bringing the empties into the mine field and taking the loads back to Galesburg.

Q. What types of locomotives are used in the Fulton County District?

A. We use the Santa Fe type M-2 engine with a tractive effort of 81,600 pounds, and—well, that is the principal engine that is used there.

Q. Well, what locomotive is used in gathering the coal from Lewistown?

A. Into Lewistown is what we term the O-3 engine, which [fol. 1136] has a tractive effort of 66,645 pounds.

Q. What is the tonnage rating of that locomotive on that particular gathering line?

A. About 2200 tons.

Q. Do you have the ruling grade on that line also?

A. Yes, sir, it is 1.65.

Q. Per cent?

A. Per cent.

Q. Now, from Lewistown to Yates City, what is the tonnage rating of the locomotives in general use?

A. That is the M-2 engine with a tonnage rating of 5800 tons.

Q. What is the ruling grade from Lewistown to Yates City?

A. .74 per cent.

Q. Now, from Yates City to Galesburg what is the tonnage rating of the M-2 locomotive?

A. 5,000 tons.

Q. And what is the ruling grade between those points?

A. 1.08 per cent.

Q. Now, will you describe how coal originating at Victoria is handled?

A. The coal comes to us at about five miles east of Galesburg, at a town called Wataga, and it is picked up there either by the local or some extra and taken into Galesburg for classification.

Q. Now, as I take it, Mr. Pearson, all of the coal from [fol. 1137] mines on the Burlington which you have named, moving to points in Northern Illinois and Eastern Iowa, *are* handled through Galesburg, is that correct?

A. That is right.

Q. Now, from Galesburg will you trace the movement of coal from any of these mines to Rochelle, Illinois?

A. The coal would move over our main line to Aurora, Illinois, and then over what we know as the Aurora-Savanna line back to Rochelle.

Q. And from Rochelle will you trace the movement to Rockford?

A. The trains start at Rochelle and they go to Flag Center, which is on the same line, and from there they go north on the branch to Rockford.

Q. Will you trace the movement of coal from Rochelle destined to Polo, Illinois?

A. It would continue on that line, the same Savanna branch line, to Polo.

Q. Now, Mr. Pearson, what is the locomotive generally used by the Burlington from Galesburg to Aurora?

A. Our largest locomotive is what is known as the O-5, with a tractive effort of 80,700 pounds and 6,000 tons rating. We do operate some other engines there.

Q. What other locomotives are used in that territory as a general rule—not the occasional ones, but the ones generally operated?

[fol. 1138] A. An O-3 engine with a tractive effort of 66,645 pounds and a tonnage rating of 5500 tons.

Q. Now, can you give us the ruling grade from Galesburg to Aurora?

A. .4 of one per cent.

Q. Now, from Aurora to Rochelle what type of locomotive is used in that service?

A. We use the O-5 type of engine with a tractive effort of 80,700 pounds, and a tonnage rating of 3300 tons; and we use the O-3 engine with a tractive effort of 66,645 pounds, a tonnage rating of 2750 tons.

Q. Would those ratings also apply on shipments moving from Aurora to Polo?

A. They would.

Q. Now, to Rockford from Flag Center what locomotives are used on that line?

A. We use what we know as the O-1-A engine, with a tractive effort of 58,090 pounds, tonnage rating of 2200 tons.

Q. Mr. Pearson, can you give us the ruling grade between Aurora and Savanna, which would include shipments moving to Rochelle and Polo?

A. .8 of one per cent.

Exam. Trezise: Mr. Biaett, do you think it would help the uninitiated if they had before them Exhibit No. 6 introduced by Mr. Robertson to guide them in the testimony [fol. 1139] that is being given?

Mr. Biaett: I think it would be very helpful. The witness is testifying from that exhibit, and I am questioning him from that exhibit.

By Mr. Biaett:

Q. Now, on shipments of coal from Galesburg to Sterling and Amboy, will you describe the movement to those points?

A. That coal would move on our line north from Galesburg to Denrock and over the branch line to Sterling and Amboy.

Q. What type of power is commonly used on that line, Mr. Pearson?

A. We use the O-1-A engine with a tractive effort of 58,090 pounds, tonnage rating 2250 tons, and we also use the O-5 engine, tractive effort of 80,700 pounds, tonnage rating of 3200 tons.

Q. Now, will you describe the movement from Galesburg of shipments of coal destined to Moline, Rock Island or Davenport?

A. They move on that line north from Galesburg to Barstow, and then they are usually handled by switching power or other trains that move over from Barstow to what we call the Tri-City District, Rock Island, Moline and Davenport.

Q. Is there a rating on that switching power?

A. No, I haven't any rating on that.

Q. Now, from Galesburg to Clinton, Iowa, will you trace that movement from the point at which you last stopped and which I believe is Denrock?

A. It moves over the line, the Savanna line, and switches [fol. 1140] off at a point known as Lass, where it goes over across the river to Clinton.

Q. What locomotives are used on that line, Mr. Pearson?

A. We use two types of power, the O-3 engine with a tractive effort of 66,645 pounds, tonnage rating of 7,000 tons, and the M-2 engine with a tractive effort of 81,600 pounds and tonnage rating of 7500 tons.

Q. Now, from Lass to Savanna are those same locomotives in common use?

A. That is right.

Q. Would their tonnage ratings be the same?

A. Approximately the same.

Q. From Savanna to Dubuque what type of power is commonly used by the Burlington?

A. We use the O-1-A type with a tractive effort of 58,099 pounds and a tonnage rating of 6000 tons; and the O-5 engine, tractive effort of 80,700 pounds, tonnage rating 7500 tons.

Q. What is the ruling grade from Galesburg to Savanna?

A. .9 of one per cent.

Q. And from Savanna to Dubuque?

A. Well, there is no ruling grade there. It is along the river.

Q. What is the ruling grade from Denrock to Sterling and Amboy?

A. .46 of one per cent.

Q. Now, from Flag Center to Rockford, did you give that ruling grade?

[fol. 1141] A. That is .6 of one per cent.

Q. Now, I believe you stated the Burlington also served a mine at Alpha, Illinois?

A. Yes, sir.

Q. Will you trace the movement of coal from Alpha to Sterling, Amboy, Polo, Rockford and Rochelle?

A. It would be picked up by northbound trains from Galesburg. Alpha is just north of Galesburg on our Savanna line, and it would be taken up to Denrock and get into the same run as the other coal.

Q. And it would move in the same manner to the towns in Northern Illinois and the towns in Eastern Iowa?

A. Correct.

Q. Now, coal which comes to the Burlington at Peoria, how would that move?

A. It would move into Galesburg the same as the Fulton County coal.

Q. And from there the movement would be the same as from Southern Illinois, Fulton County, and the other points?

A. Yes, sir.

Q. Mr. Pearson, taking the transportation of coal and the operating conditions on the Burlington, how do the operating conditions from the Illinois mines served by the Burlington, moving to Rochelle, Rockford, Polo, Sterling and Amboy, compare with the operating conditions from Illinois mines on the Burlington moving to Moline, Rock

[fol. 1142] Island, Davenport, Clinton, Savanna and Dubuque?

A. They would be very similar. We have a heavier volume of traffic in along the river, which might reduce the expense a little.

Mr. Biaett: That is all I have.

Exam. Trezise: Well, Mr. Pearson, the state commerce there, within the state, and that to an interstate point, that is a point outside of the state—and 99 per cent of the movement is in Illinois, isn't it, more than that perhaps?

The Witness: I haven't the percentages, but it would be largely that.

Exam. Trezise: It is substantially all in Illinois, that is, the movement to Iowa destinations substantially, the whole movement is in Illinois; that is the point I am making.

The Witness: That is right.

Exam. Trezise: Do we have some questions?

Cross-examination.

By Mr. Cardy:

Q. Mr. Pearson, all of this traffic to Iowa moves to the Mississippi River, doesn't it?

A. I didn't get that.

Q. All of the traffic you have been discussing going to Iowa points moves across the Mississippi River?

A. Yes, that is right.

Q. Now, have you encountered any transportation con-[fol. 1143] ditions on moving that coal over the Mississippi River which you do not encounter in the movement of state traffic to a point, we will say, like, well, similarly situated in Illinois? What difficulties have you in going or in moving your traffic over the Mississippi River which you haven't in Illinois?

A. Well, you would have to cross the bridge, which doesn't present any particular difficulty.

Q. Is there any bridge charge, or what is the expense you have incident to making a river crossing on interstate traffic that you haven't on Illinois traffic? Can you give us any information on that?

A. I don't know that I can answer you definitely. So far as I know, there is no charge. I think we own the

bridges. I don't think there is any charge. I can't answer that.

Q. In other words, you haven't any information as to that?

A. No, I can't answer that.

Exam. Trezise: Any further questions?

By Mr. Vesey:

Q. As an expert, would you say it is more expensive——

Mr. Biaett: I object. The witness hasn't been qualified as an expert.

Mr. Vesey: May I finish my question?

Exam. Trezise: I didn't hear what you said there.

Mr. Vesey: I got three words out.

Exam. Trezise: I got only two of them.

[fol. 1144] By Mr. Vesey:

Q. As an expert, could you tell us whether or not it is more expensive for a railroad to move freight across a natural barrier, such as the Mississippi River, than it is to move it across ordinary terrain?

Exam. Trezise: Now, the question arises, is he an expert at that thing? You didn't mean to charge him with being an expert at cost figures?

Mr. Vesey: I presumed Mr. Biaett called him an expert witness to tell us about operating conditions.

Exam. Trezise: Yes, but not as to the costs. If you want him to answer, go ahead. Tell him about the cost.

Mr. Vesey: Certainly. I am just seeking information.

Mr. Biaett: I object to the question as it is now put. The witness isn't qualified to answer.

Mr. Vesey: You mean he is not an expert?

Mr. Biaett: Well now——

Exam. Trezise: I don't believe you need to answer that. You charged him with being an expert. He didn't say he was an expert. Do you have some other questions?

By Mr. Vesey:

Q. All right. As an operating man, pure and simple, is there any substantial difference in operating conditions in the movement of coal from Fulton County, Illinois, across

into Iowa, as against the movement of that same coal to a point such as Rochelle?

A. I don't think that there would be a great deal of difference.

[fol. 1145] Q. What is that?

A. I say, I do not think there would be a great difference.

Q. And in answering that question, I assume that you base it on the thought that once the roadbeds and the like have been established, it is from then on that you are making your appraisal, is that right?

A. That is right.

Q. In other words, you are not indicating or implying that the original cost to the line of construction of roadbed would make a difference?

Exam. Trezise: Do you want to go with him on that? If you don't, tell him so.

The Witness: I can't answer as to the original cost. After the bridge is in, I don't think it costs any more to haul across the river than along our line.

By Mr. Vesey:

Q. And it is on that basis you have been answering the questions?

A. That is right.

Q. Now, when you said there was no ruling grade from Savanna to Dubuque, what do you mean?

A. I mean that there is practically a level line.

Q. Practically a level line?

A. Yes.

Q. Now, generally speaking, as I understood your testimony, the coals which you pick up in Fulton County in effect [fol. 1146] are brought right into your trainloads of coal coming from your Centralia classification yards from Southern Illinois mines going into this territory?

A. That is right.

Q. So that in so far as Fulton County coals are concerned, looking at it from an operating point of view, you have virtually the same operating conditions as you have on the Southern Illinois coals?

A. That is right.

Q. In other words, there is not such a difference as you, as an expert operating man, could distinguish between the two?

A. You are talking about after the coal is at Galesburg, as I understand?

Q. That is right.

A. I don't see any difference.

Q. Now, I notice that you didn't give the ruling grade on your pickup service on Southern Illinois coals, nor did you specify, except in the case of Christopher, the number of mines served in each of the other three territorial points.

A. I haven't got with me the grade figures from the mines into these concentration points. I can give you the names of the other mines, if you wish them.

Q. Well, you said there were three mines at Christopher?

A. Three at Christopher.

Q. How many at Herrin?

[fol. 1147] A. Three at Herrin.

Q. How many at Zeigler?

A. There are two mines at Zeigler.

Q. How many at West Frankfort?

A. There are five mines.

Q. Now, you say you don't have the ruling grade there?

A. Not from the mines into the assembly point.

Q. I take it, there wasn't sufficient difference between the ruling grades on your Southern Illinois pickups as against your Fulton County pickups to even arouse your curiosity to make a comparison, is that correct?

Mr. Biaett: I object to the question. If he wants to ask a question, that is perfectly all right.

Mr. Vesey: If the examiner please, he said he didn't have that information. Now I ask him whether there wasn't evidently not enough difference in there to arouse his curiosity to make a comparison, as an operating man.

Exam. Trezise: I think the question is all right, if the witness can answer it.

The Witness: Of course, the territory you are speaking of is the territory that is served by the switching power there and it is just the gathering service in the field, and I don't think it is necessary to take into account very much the grades.

By Mr. Vesey:

Q. Exactly. In other words, looking at the thing as a whole, comparing, let us say, Fulton County as against

[fol. 1148] Southern Illinois, you as an operating man didn't feel that there was anything of sufficient significance to warrant your going to the trouble of looking up the ruling grades moving from the mine to your concentration points, did you, in Southern Illinois?

A. I would say the pickup service wouldn't be of so much difference. I think I did testify that the grades over in the Fulton County District are a little heavier than from the Herrin field to Galesburg.

Q. Now, tell me something about running a railroad. Let me ask you this: as I understand it, on a railroad you have got two things, the cost of moving a train after it has been loaded; and secondly, your terminal charges incident to the assembly of that train at your terminal points. Those are your two principal costs, is that right?

A. I would think so.

Q. Now, when it gets on to a railroad track, it doesn't cost any more to pull 50,000 pounds of one kind of coal than it does to pull 50,000 pounds of another kind of coal?

A. Not on the same piece of track.

Q. So if we are moving coal over the same piece of track from two different fields, the cardinal point is the terminal charges incident to transportation of coal from one field or another, is that right?

A. If I understand your question, I think "yes" is the answer.

[fol. 1149] Mr. Vesey: That is all.

Mr. Cardy: Mr. Examiner, I move to strike out the last answer Mr. Pearson made to Mr. Biaett's question, namely, that there was no substantial difference in the movement of traffic to these points in Iowa as compared to the points in Illinois, for the reason he didn't submit any testimony concerning coal movement over the Mississippi River. In other words, I don't want that statement to go without any scintilla of evidence showing the difficulties he might have in handling the coal across the Mississippi and making deliveries to these Iowa points. I make that as a motion.

Mr. Wood: I join in that motion. I urge that it be sustained for the reason——

Mr. Cardy: I might say that it is a mere conclusion of the witness, not based upon any facts of record.

Exam. Trezise: Mr. Wood.

Mr. Wood: The attorney and the witness both disavow any expert rule of costs, and it would be obviously impossible for him to make such a comparison as he has made in answering this last question, without knowing that.

Exam. Trezise: Well, Mr. Pearson, your locomotive tractive effort and your tonnage ratings that you have testified about here, neither one would be varied to any substantial extent by the hauling of the shipments across this river, is that true?

The Witness: Yes, sir.

[fol. 1150] Exam. Trezise: And so far as the costs of hauling it here, there or elsewhere is concerned, you have given no information, have you?

The Witness: No, sir.

Exam. Trezise: You did not appear here to give cost figures, did you?

The Witness: No, sir.

Exam. Trezise: Well, with that in view, you have his testimony, and nobody could be prejudiced with that answer. We will let it stand with the understanding that has been given by the answers to the Examiner's questions.

Mr. Wood: I withdraw my objection.

Exam. Trezise: Are there any further questions?

Mr. Stadell: I have a few questions I would like to ask Mr. Pearson.

Exam. Trezise: Mr. Stadell.

By Mr. Stadell:

Q. You stated that the coal from the Southern Illinois mines after having been assembled and brought into the four concentration points was then taken over to the Centralia yard?

A. That is right.

Q. And at the Centralia yard the only service you performed there, as I understood you, was to switch out the coal for St. Louis or other points west of Centralia?

A. That is right.

[fol. 1151] Q. Does the coal that originates in the Southern Illinois District then move in solid trainloads from Centralia to Galesburg?

A. That is right.

Q. You gave the tonnage rating of the locomotive used there as 6500 tons, but you stated that more was handled, is that right?

A. Our rating shows it as 6500 tons.

Q. Well, approximately how many cars per train do you haul from Centralia to Galesburg?

A. Well, that would be approximately 90 cars in a train like that.

Q. You do haul at times a hundred cars, do you not?

A. Yes, sir.

Q. And sometimes in excess of 100 cars?

A. That is right.

Q. And at Galesburg the train is then broken up and the coal in that train for Chicago is taken out and put in a train going towards Chicago?

A. That is right.

Q. And coal going to these Iowa points or Illinois river points that you referred to would go on a different train, would they not, than the coal you were taking over to Rockford or Rochelle or Polo?

A. That is right.

Q. Now, you referred to the line between Savanna and [fol. 1152] Dubuque as being practically a level line. That territory through there is very rough and hilly, is it not?

A. Along the river the territory is, but we are right down along the bank of the river. Our engineers said there was no grade.

Q. But you had to do considerable blasting and excavating there in order to locate your line there, did you not?

A. I am not familiar with the construction of it. I assume they did some.

Q. Assuming you did, the investment per mile of road would be considerably greater, would it not, than it would be from a point like Galesburg to Rockford or in territory where you have a flat terrain?

A. Well, I presume from Galesburg to Rockford there would be quite a lot of hills to level out.

Q. You don't know that, though?

A. I am not familiar enough with the terrain to really answer your question intelligently.

Q. Coming to the question of these bridges across the Mississippi River, between Rock Island or Moline and Davenport, does that bridge belong to the Burlington over which your trains operate?

A. I can't answer yes or no. I think it is, but I am not sure.

Q. How about between Savanna, is it, and Dubuque, is that bridge owned by the Burlington?

A. Between East Dubuque and Dubuque?

[fol. 1153] Q. Between East Dubuque and Dubuque.

A. The same answer there. I rather think it is owned, but we use the same bridge as the Illinois Central. They may own it. I am not sure.

Q. Do you have any knowledge as to approximately how long those bridges are?

A. No, I haven't.

Q. And you have no knowledge as to the approximate cost of construction of the track and bridge per mile as compared to the cost of constructing a mile of track on the ordinary line of road in Illinois?

A. No.

Mr. Sadell: That is all.

Mr. Cardy: Just one other question.

Exam. Trezise: Mr. Cardy.

By Mr. Cardy:

Q. Mr. Pearson, have you made any study or have you any figures showing density of traffic moving north of Galesburg to points in Northern Illinois as compared with the density of traffic moving to these Iowa destinations? Is it about the same or is there a substantial difference? It might be helpful to us if you have those figures.

A. Well, the Iowa——

Mr. Biaett: Excuse me. You want to know if he has any figures, don't you?

Mr. Cardy: If he has any figures, or he can tell in a gen-[fol. 1154] eral way, based on his knowledge, if there is any substantial difference.

Mr. Biaett: Answer first, do you have any figures?

The Witness: No, I have no figures.

Mr. Cardy: All right, that is all.

Exam. Trezise: Mr. Wood.

By Mr. Wood:

Q. Mr. Pearson, if there is any damage found on these bridges between Dubuque and East Dubuque and at Davenport and Rock Island, reported by your transportation department, do you ever get reports about the condition of the bridge?

A. You mean as to the need of their repair?

Q. Yes, sir.

A. That wouldn't come to our department.

Q. Are you in charge of transportation men, the men that handle the transportation, as superintendent of transportation?

A. We have charge of the movement of traffic, but not of the maintenance of the line.

Q. No. I am asking you if any of your men in the transportation department ever report to you the need of any repairs on these bridges?

A. They don't report to me.

Q. They never have?

A. They would report that to the engineering department.

Exam. Trezise: They normally wouldn't make such reports to you?

[fol. 1155] The Witness: Not to us, no, sir.

Mr. Wood: I see.

Mr. Stadell: I have one more question.

Exam. Trezise: All right, Mr. Stadell.

By Mr. Stadell:

Q. In stating in answer to Mr. Biaett's question that in your opinion the transportation or operating conditions, rather, to the Illinois points such as Rockford and Polo, were substantially similar to those to Moline or Rock Island or the other points he referred to along the river, you were basing that only on the conditions obtaining on the Burlington, were you not?

A. That is right.

Q. You have no first hand knowledge of the operating conditions on any of the other railroads in that district?

A. I have not.

Mr. Biaett: My questions were confined to the Burlington.

Exam. Trezise: Any further questions?

Mr. Bather: I have one question, Mr. Examiner.

Exam. Trezise: Mr. Bather.

By Mr. Bather:

Q. How do the transportation conditions in the movement of coal from Galesburg to Rockford compare with the

transportation conditions in the movement from Galesburg to Chicago?

A. From Galesburg to Aurora it would be the same. Then it would be switched out and put in another train to Rochelle, [fol. 1156] where it would be switched into another train for Rockford. So there would be a little extra handling in going to Rockford.

Q. Don't you run through trains from Aurora to Rockford?

A. Not generally. They might if there was a sufficient volume, but usually the trains start at Rochelle.

Q. In the movement of coal from Aurora to Rockford, isn't it a fact that most of that movement is in solid coal trains?

A. Well, I don't believe that it is. I can't say definitely, because I haven't checked that feature of it recently. But I would guess that it was handled in the regular train.

Q. In mixed trains?

A. Yes.

Mr. Bather: That is all.

Exam. Trezise: If there are no further questions, you may be excused, Mr. Pearson.

(Witness excused.)

Exam. Trezise: We will take a few minutes' recess.

(A short recess was taken.)

Exam. Trezise: All right, gentlemen, when you are ready, let us continue.

Mr. Zoll: I will call Mr. Lynch.

S. F. Lynch was sworn and testified as follows:

Direct examination.

By Mr. Zoll:

Q. Will you please state your name.

[fol. 1157] A. S. F. Lynch.

Q. What is your address?

A. Home address?

Q. No, your office.

A. Office address is 135 East 11th Place, Chicago.

Q. What is your position with the Illinois Central System?

A. Superintendent of transportation.

Q. That is in the operating department, is that right?

A. Yes, sir.

Q. How long have you been in the Illinois Central's operating department?

A. I have been working for the Illinois Central for 32½ years, and practically all of that time, with the exception of about eight years in the mechanical department, has been in the operating department.

Q. Could you tell us just a little bit more about what operating positions you have held?

A. Chief clerk to superintendent, assistant trainmaster

Q. Where were those, Mr. Lynch?

A. Chief clerk to superintendent at Vicksburg, Mississippi, and assistant trainmaster and trainmaster at Vicksburg; trainmaster on the Springfield Division, with headquarters at Clinton, having the territory between Centralia and Freeport.

Q. Now, do you have this map, Exhibit 6, before you?

A. I have one here, yes, sir.

[fol. 1158] Q. Now, you will notice that the line of the Illinois Central is shown in red on this map?

A. Yes, sir.

Q. And it shows the Illinois Central serves Southern Illinois, among other coal groups, is that correct?

A. Yes, sir.

Q. Now, the map also shows the Illinois Central serves Chicago, Peoria, Pekin, South Pekin, LaSalle, Mendota, Amboy, Dixon, Polo, Forreston, Freeport, Rockford, and the famous Apple River, Dubuque, as well as Madison, Wisconsin. Do the rails of the Illinois Central reach those points?

A. Yes, sir.

Q. I wish you would tell us what the normal routes are over which the Illinois Central handles bituminous coal from its mines in the Southern Illinois Group to those points?

A. The coal is moved up through DuQuoin to Centralia, and for Chicago the coal is moved from Centralia on up through Champaign and Gilman into Chicago. Most of this coal is moved in solid train lots. The coal for the points like Amboy, Forreston and Mendota, and Dubuque and Rockford, is switched out from the Chicago coal at Centralia

and is moved up what is known as our old main line through Decatur to Clinton, and from Clinton north through Bloomington, LaSalle, Mendota and Forreston and Amboy; and the cars for Dubuque go on to Freeport and are handled by the same crew and engine.

[fol. 1159] Q. You say at Centralia the Chicago coal is switched out?

A. Switched out from coal that moves out to Amboy, Forreston, Mendota.

Q. And those other points you mentioned?

A. Yes, sir.

Q. Is there any other switching done north of Centralia other than at Clinton, along the main line?

A. Clinton would be the only place. They would line up the coal for points north of Clinton. Any coal for points south of Clinton are lined up at Centralia.

Q. How about coal that is interchanged at Mendota?

A. At Mendota they would be lined up to set out at Mendota. It would be in station order.

Q. The same for Forreston, I suppose?

A. Yes, sir.

Q. Do the trains in which you transport cars of coal from Southern Illinois destined to Madison, Wisconsin, contain cars of coal from Southern Illinois destined only to Madison or points beyond Freeport?

A. No, sir. The coal trains and trains that handle coal handle the coal for Amboy and Forreston and Mendota as well as Freeport and Dubuque, as well as Peoria, connections at those points.

Mr. Bather: Do you handle Rockford coal in that train too, Mr. Witness?

[fol. 1160] The Witness: Yes, sir.

By Mr. Zoll:

Q. Now, could you tell us just how those cars of coal are handled from Southern Illinois to those destinations? You will have to divide your destinations, I suppose. You might take Madison and Freeport and Rockford and Dubuque, for example, in a group.

A. To Beloit and Janesville the usual route is to the Milwaukee at Mendota or the North Western at South Pekin. To Fort Atkinson and Lake Mills it is to the North

Western at South Pekin. For Burlington, Wisconsin, the interchange is principally at Chicago. For Clinton, Iowa, it is to the Burlington at Centralia, the North Western at South Pekin, and the Milwaukee at Forreston or Mendota. For Davenport, it is to the Burlington at Centralia or Peoria, or the Milwaukee at Mendota or Forreston. For Savanna, it is to the Burlington at Centralia or the Milwaukee at Mendota or Forreston.

Q. I would like to get some distances in the record here, Mr. Lynch. Exhibit 3, Section 5, page 18, shows that the average distance from origins on the Illinois Central in Southern Illinois to Freeport is 340 miles. Could you tell me what the distance is via the Illinois Central from Freeport to Madison?

A. 62 miles.

Q. And Freeport to Rockford?

A. 27 miles.

Q. And Freeport to Apple River?

[fol. 1161] A. 31 miles.

Q. Freeport to Dubuque?

A. 69 miles.

Q. Mendota to Freeport?

A. 63 miles.

Q. And LaSalle to Freeport?

A. 79 miles.

Q. As I understand you, you said that coal for Dubuque, Apple River, Madison and Rockford and Freeport is handled in the same train as far as Freeport?

A. Yes, sir.

Q. And could you say what happens then?

A. At Freeport then it is switched out and classified, and that which goes to Dubuque is placed on a westbound train, to Madison on a northbound train, and to Rockford on an eastbound train.

Q. Now, aside from placing the cars in station order, are all of the cars, regardless of destination, accorded the same treatment?

A. Yes, sir.

Q. They are handled in the same manner?

A. Yes, sir.

Q. Do the same trains handle the interstate as well as the state coal?

A. Yes, sir.

[fol. 1162] Q. Is any distinction made, Mr. Lynch, between the interstate and intrastate coal, in so far as the switching operations along the way are concerned?

A. No, sir.

Q. What is the difference then in the conditions that affect the transportation of interstate as distinguished from intrastate coal?

A. Well, the only difference I would see would be distance.

Mr. Zoll: I think that is all.

Cross-examination.

By Mr. Cardy:

Q. Just one question: what is the distance between LaSalle and Dixon?

A. LaSalle is 79 and Dixon is 35—35 from 79 is 44 miles.

Q. As I understand, the traffic destined to LaSalle and Dixon moves right through both those points to Freeport. If you have a car for LaSalle, you set it out at LaSalle, and if you have a car for Dixon you would set it out at Dixon and the train would go through the terminal points to Freeport?

A. Yes, sir.

Q. Then the distribution of coal say for Rockford, Beloit, would be split up and would go either eastbound or westbound?

A. Yes, sir.

Q. You stated there was no substantial difference in transportation conditions on the movement of interstate coal, we will say, westbound, or were you talking about Iowa [fol. 1163] or Wisconsin? You said interstate coal. Now, you didn't mean to say there was no substantial difference on the movement to Iowa points as compared with Illinois points, did you?

A. No, I said the only difference I see particularly is distance.

Q. You had in mind, I take it, points like Beloit in Wisconsin?

A. I had in mind any of those points we were dealing with.

Q. Did you make a study at all as to the conditions in moving across the river and to points beyond the river where the distance might be substantially greater?

Mr. Zoll: Mr. Lynch restricted his testimony in this instance to the transportation conditions to these comparative points that we have used in Mr. Robertson's exhibits.

Mr. Cardy: He was not talking about Iowa destinations?

Mr. Zoll: Central Iowa?

Mr. Cardy: Yes, or points west of the river.

Mr. Zoll: His testimony didn't go to that.

Mr. Cardy: Well, if it didn't go that far, then I have nothing further.

Exam. Trezise: Any further questions?

Mr. Cardy: Well, I think that Mr. Zoll has answered my question, that he wasn't attempting to prove interstate conditions in Iowa by this witness. Is that true?

Mr. Vesey: You said Central Iowa; what you meant was he did compare these points and Eastern Iowa destinations? [fol. 1164] Mr. Zoll: Yes. He wasn't talking about Des Moines or Fort Dodge.

Mr. Vesey: Yes, but he was talking about Eastern Iowa?

Mr. Zoll: The points in Mr. Robertson's exhibits, which include Dubuque, for example, on the I. C.

By Mr. Cardy:

Q. You didn't take into consideration the terminal conditions and the conditions in Iowa, Eastern Iowa, along the river there, we will say, to Lebanon or Dubuque, when you said that the transportation conditions interstate and state were substantially the same?

A. I said the difference would be distance, that would be my judgment.

Q. That is all it is, distance?

A. Yes.

Q. You didn't make any study to see if there was a real substantial difference in the transportation conditions?

A. What kind of difference did you have in mind, sir?

Q. Well, possibly the cost, it might cost you some substantial amount to make deliveries at Dubuque across the river. I don't know what the terminal conditions are at Dubuque as compared with Illinois points. You haven't described it. Is there any difference at all?

A. You are confronted with transportation problems in the transportation industry almost any way you turn. Why, those problems you speak of, we have them everywhere.

[fol. 1165] Q. And the relative shortness makes a difference, making deliveries, as compared to a point like Rockford and Beloit, where you have not the river to be confronted with?

A. Oh, yes. You find there at LaSalle, why, we have had, in going across the river at LaSalle, why, we have quite a long bridge there too. We recently had a lot of floods on other parts of the railroad. We always have problems of some kind or another. I guess that is what keeps me working on the railroad.

Q. You didn't have those conditions in mind when you said distance was the only factor?

A. As far as I can see, that is the only thing.

Mr. Cardy: All right.

By Mr. Vesey:

Q. I understand from that answer, Mr. Lynch, then certainly present in your mind now is the fact that bridges are handicaps and hazards of such nature as to present different transportation conditions, is that right?

A. I was just pointing out that regardless of what territory we have, why, we have some kind of problem, and he spoke of bridges, and I spoke of the bridge at LaSalle, that we had had trouble with it.

Q. Then I take it, the longer the span, so to speak, the greater the problem?

A. No. It is the construction and the kind of foundation it has and whether it is an overhead or underslung bridge, things I don't know anything about to really talk, because [fol. 1166] I don't know anything about bridges, except to go across them.

Q. Well, you just mentioned floods. I take it, then, the tendency of a river to flood would be an important item in so far as transportation?

A. It might if the water got over the approaches—for instance, right now at Murphysboro we are washed out. We hope to get it in service again in about a month.

Q. As I gather from your testimony and in looking at Exhibit 6, in your opinion there is no difference in transportation conditions except in so far as distance is concerned, whether you move directly along the rails of your railroad or whether you move along your railroad

and switch over to some other railroad going into Eastern Iowa?

A. I am not in a position to testify about anybody else's railroad. I spent all my life on the Illinois Central.

Q. Wouldn't you think it would be an important thing in connection with transportation conditions to find out what the nature of the switching arrangements or switching charges and the like are in testifying as to operating conditions, whether you are moving off your lines or whether you are moving on your lines the whole distance, in making comparisons?

A. To make a comparison?

Q. Yes, sir.

A. No, sir, I had not.

Q. You have not what?

[fol. 1167] A. Made any comparison as to cost of switching and switching charges that you referred to there.

Q. How did you arrive at the conclusion there was no substantial difference in the operating conditions between your service to the Illinois destinations on your own line and service to Iowa destinations where you transfer that coal on to other roads for delivery? How did you make that determination?

A. The only thing that I say is that it moves just about as well for us there, with as little difficulty going one place as it does another.

Q. How do you know?

A. Well, because of the fact I watch them every day and have for a number of years.

Q. What do you watch?

A. Watch the movement of trains and see how they go over the road, how the business moves, and the small number of complaints we get regarding transit and delays and so forth.

Q. Is that what you mean by operating conditions in your answers that you gave, that there was no substantial difference? Is that the basis that you used?

A. Is what the basis?

Q. Just what you have recited, is that the basis for your answers that there was no substantial difference in operating conditions?

A. That would be one of the bases for it.

[fol. 1168] Q. What is the other?

A. Well, the other is that nobody has ever told us, we never get any information that there is any particular difference in operation over one part of a railroad compared with another.

Q. So unless somebody tells you there is a difference, you just assume there isn't any?

A. As far as my experience, 32½ years with the railroad.

Q. Did you have any other basis for your answer?

A. I don't think of any right now.

Q. Those are the two things you relied on to make the statement that there was no difference in transportation conditions?

A. Yes, sir.

Q. You said "yes"?

A. I said, yes.

Mr. Vesey: That is all.

Exam. Trezise: Any further questions?

By Mr. Stadell:

Q. As I understood it, Mr. Lynch, your testimony was restricted, so far as all the points of destination are involved, to conditions on the Illinois Central?

A. Yes.

Q. You are not testifying here about the operating conditions on any other railroad from or to any point in Illinois or from Illinois to any point outside of Illinois?

A. I couldn't do it intelligently.

Q. You have no personal knowledge of the operating [fol. 1169] conditions on any other railroad?

A. No, sir.

Mr. Stadell: That is all.

Exam. Trezise: Any further questions?

By Mr. Bather:

Q. Mr. Lynch, the movement of coal to Freeport and Rockford from Clinton, is that coal moved in solid coal trains?

A. No, sir, not generally speaking.

Q. But there is a heavy movement in solid coal trains from Clinton originating at Southern Illinois to Freeport?

A. Yes, wherever we have the business, why, then we would have a trainload of it. If we had enough business to

justify it, but there are very few trains that don't have something else in them besides coal.

Q. But the bulk of the traffic moving on that line, Clinton to Freeport, is a coal movement?

A. Yes, sir.

Q. How do the transportation conditions from Clinton through Freeport to Rockford compare with the transportation conditions from Centralia to Chicago?

A. Well, Centralia to Chicago, of course, is double-track, and the line up through Clinton is a single-track railroad. That is one of the differences in there. They there are parts of this line through Clinton that isn't block-signalled and it isn't maintained to as high a degree because of the [fol. 1170] fact they don't operate passenger trains on it. That is strictly a single-track freight line.

Q. But you do operate passenger trains between Centralia and Chicago on that double-track?

A. Yes, sir.

Q. As I understand it, there is no passenger service between Clinton and Freeport?

A. No, sir, between Centralia and Freeport.

Q. Now, how do the terminal conditions at Rockford compare with the terminal conditions at Chicago in making deliveries of coal at those two points?

A. How do you mean, how do they compare?

Q. Well, is your terminal expense in making deliveries in the Chicago District greater than they would be at Freeport or Rockford?

A. I don't know, sir. I haven't any figures on what they cost. What we figure on usually is the cars handled per hour.

Q. I am talking about operating conditions. Are the operating conditions in making deliveries at Freeport and Rockford the same as they are at Chicago?

A. The element of distance would come in there.

Q. And also the element of getting the cars at Chicago to connecting lines through the belt lines, would that be considered?

A. Yes, sir. Some of the lines will take delivery through the Belt, and to others we make direct delivery.

[fol. 1171] Q. But you don't have that same condition in so far as Rockford and Freeport are concerned?

A. No, sir.

Mr. Bather: That is all.

Mr. Zoll: If there is no other cross-examination, there are a few additional questions I would like to ask.

By Mr. Bather:

Q. There is one other point I would like to make. You say the element of distance would enter into that terminal situation. What do you mean by the element of distance?

A. I mean, for instance, you take a car from Markham or a dozen cars and take them, to deliver them or place them, why, it would be a much greater distance than you would go anywhere within the yard limits at Freeport or Rockford. That is what I meant by that.

Q. But still that has to be considered in the line—haul service rendered by the Illinois Central Railroad?

A. It would have to be considered, is that your question?

Q. Yes.

A. I presume so. I wouldn't know just what kind of consideration we would give it. I was just basing it on my own personal knowledge of what takes place and what I have seen.

Q. As I understand your answer, does this coal come into the Chicago District to your Markham yard and is broken up there?

A. Yes, sir.

[fol. 1172] Q. And those cars of coal are classified according to the deliveries on connecting lines, where a connecting line delivery is made?

A. Yes, sir, or whether it is going to be placed at some industry there.

Q. Now, at Freeport and Rockford you haven't got the same complicated situation as you would have in making such deliveries at Chicago?

A. No, I wouldn't think so, not near as many deliveries to be made, not as many places to have the coal placed as there is at Chicago.

Q. And your switching to connecting lines at Rockford and Freeport is comparatively simple as compared with a terminal like Chicago?

A. Yes.

Mr. Bather: That is all.

Mr. Vesey: May I ask one question in view of that?

Exam. Trezise: Go ahead.

By Mr. Vesey:

Q. In other words, I take it from these last answers that you have given to Mr. Stadell and Mr. Bather, that in appraising operating conditions when comparing movements from, say, two origin groups or to two destinations, the principal point of differentiation between the two is the terminal conditions?

A. I would say so, yes.

[fol. 1173] Q. In other words, it costs just as much to move a car of coal the first ten miles as it does the last ten miles on a given run?

A. Yes. I wouldn't see any difference particularly in the cost.

Q. And you could broaden that out, whether it was the first hundred or the last hundred, or the first hundred against the last ten miles, mile per mile, the cost is the same once on the line?

A. You would have certain grade conditions that would make you burn more coal and keep you from hauling as heavy a train. That would have something to do with your difference in the cost, as far as comparing one part of the railroad with another part.

Q. Now, except for that, it would be the same?

A. I can't think of any other particular difference.

Q. Now, when you talked about grade, is there any substantial difference in cost between handling coal over a road where you have a .78 of one per cent grade as against .50 of one per cent?

A. That much difference wouldn't make a great deal of difference.

Q. It is almost infinitesimal?

A. Yes.

Q. So that in appraising operating conditions from your point of view, as I understand it now, the principal point of inquiry should be terminal conditions, terminal charges?

A. That is a factor, yes, sir.

[fol. 1174] Q. That is the principal factor, isn't it?

A. Well, I wouldn't say that it is especially the principal factor.

Q. Why wouldn't you say that?

A. Because we would have to consider all these other things we have been talking about here.

Q. You mean you would have to take in the other elements?

A. We have to take into consideration all of the different features of the operation.

Exam. Trezise: Any further questions of Mr. Lynch? (No response.)

By Exam. Trezise:

Q. Now, Mr. Lynch, you are skilled in appraising operating conditions, would you say that? That is your job, isn't it?

A. That is one of them, yes.

Q. Well, in other words, you know transportation conditions on the Illinois Central and recognize them when you see them?

A. Yes, sir.

Q. Well in connection with your testimony, and no hypothetical question whatever is assumed here, would you say that on the average or any other measure you want to make, that one mile of transportation within Illinois on this coal is substantially the equivalent of or similar to one mile of transportation to the Eastern Iowa destinations?

A. As far as the Illinois Central line is concerned, I [fol. 1175] would say there is no appreciable difference.

Q. Then my next question is, from what factors do you reach that conclusion?

A. Just the general operation.

Q. Is it because of the locomotive tractive effort required with respect to the two types of transportation? Is it because of the similarity of grades with respect to the two types of transportation?

A. That is the main thing, sir.

Q. Or is it with respect to the terminal services that might be performed with respect to the two types of transportation?

A. That would be a factor. If you are thinking on costs, why, we would have to consider the terminal expense.

Q. And when you figure on costs, have you figured on costs when you reached this conclusion, and if so, to what extent?

A. No, sir, I haven't figured on the cost.

Mr. Zoll: Mr. Examiner, in view of some of those questions I would like to ask Mr. Lynch a few questions.

Redirect examination.

By Mr. Zoll:

Q. Mr. Lynch, between Benton, Illinois, and DuQuoin, Illinois, would you tell me what the ruling grade is?

A. Benton and DuQuoin?

Q. Or between Benton and Centralia, whichever way you happen to have it.

A. Well, it is .87 of one per cent between Benton and [fol. 1176] DuQuoin; and DuQuoin to Centralia it is .49 of one per cent.

Q. Do you know the tractive force of the locomotive used in handling coal between those points?

A. Well, between Benton and DuQuoin we use what is known as the Mikado with a tractive force of 51.231.

Q. How about the tonnage rating of that?

A. The tonnage rating there is 2855. Of course, that is somewhat of a coal pickup run, like Mr. Pearson, the man that preceded me, described. We don't pay much attention to that, because we never have them loaded down anyway.

Q. How about the tractive force of the locomotive used between DuQuoin and Centralia?

A. 85,395 and potential tonnage rating is 10,555.

Q. What is the ruling grade between Centralia and Champaign?

A. Centralia to Champaign is northbound .31 of one per cent.

Q. And how about the tractive force of those locomotives?

A. Centralia to Champaign, 73,768, with 10,635 tonnage rating.

Q. What is the ruling grade between Champaign and Chicago?

A. Champaign and Chicago, .55 of one.

Q. Now, the locomotive and tonnage rating of that locomotive is the same as between Centralia and Champaign?

A. Yes, sir.

Q. Now, what is the ruling grade between Centralia and Decatur?

A. Centralia to Decatur is .76 of one per cent.

Q. And the tractive force of the locomotive?

[fol. 1177] A. 69,170, with a 4800 ton rating.

Q. That is the locomotive used to transport these cars of coal, is that right?

A. Yes, sir.

Q. How about Decatur to Clinton?

A. Same thing, 69,170, with a 7,000 ton rating.

Q. Why would that rating be different?

A. The lay of the land, the track.

Q. What is the ruling grade?

A. The ruling grade between Decatur and Clinton is .51 of one.

Q. By "one" you mean one per cent, is that right?

A. Yes, sir.

Q. Now, could you tell me the ruling grade between Decatur on our old main line and Peoria?

A. Decatur and Peoria, one per cent grade.

Q. What is the tractive force of the locomotive used?

A. 69,170, with a 6,000 ton rating.

Q. Now, let us go up north of Clinton, Mr. Lynch, to Mendota, what is the ruling grade from Clinton to Mendota?

A. Clinton to Mendota is .81 of one per cent.

Q. And what is it from Mendota to Freeport?

A. Mendota to Freeport is .76 of one per cent.

Q. Now, between Clinton and Mendota what is the tractive force of the locomotive used?

A. 69,170, with a 3855 tonnage rating.

[fol. 1178] Q. And Mendota to Freeport?

A. 69,170, with a 3675 tonnage rating.

Q. Now, go north of Freeport to Madison, Mr. Lynch. What is the ruling grade there?

A. Madison from Freeport is one per cent grade.

Q. That is the same as between Decatur and Peoria?

A. Yes, sir.

Q. This is the ruling grade northbound in each instance?

A. Yes, sir, northbound.

Q. Now, what is the tractive force of the locomotive?

A. 40,418, with 1595 tonnage rating.

Q. What is the ruling grade between Freeport and Rockford?

A. Freeport to Rockford is .49 of one per cent.

Q. And Freeport to Dubuque?

A. .81 of one per cent.

Q. What is the tractive force of the locomotive between Freeport and Rockford?

A. 65,868, with a 4,005 tonnage rating.

Q. Let me have the same information between Freeport and Dubuque westbound?

A. 85,398, with a 4725 tonnage rating.

Mr. Hunter: Mr. Zoll, could I inquire there if those are actual tonnage ratings or factor ratings?

The Witness: Those are factor ratings, equated ratings, as we call them.

[fol. 1179] Mr. Zoll: That is all I have.

Exam. Trezise: Any further questions?

Recross examination.

By Mr. Bather:

Q. Your grades are averages, are they not?

A. They are furnished by our engineering department.

Q. What is the grade on your line west of Apple River to Dubuque, do you have that information?

A. No. The only one I got is between Freeport and Dubuque.

Mr. Zoll: That wouldn't be west of Apple River, would it?

The Witness: Sir?

Mr. Zoll: Could you tell whether that was west of Apple River or east of Apple River?

The Witness: No. I have got that information to Dubuque.

Mr. Zoll: You don't have your timetable to show where the ruling grade is?

The Witness: No, sir. They don't have them shown on the Iowa Division.

By Mr. Bather:

Q. What I am getting at, you have a very substantial grade westward from Apple River going into Galena, haven't you?

A. I think so, yes.

Q. That would be over one per cent grade there, would it not?

A. It would be over one?

Q. Yes.

A. Between Freeport and Dubuque?

[fol. 1180] Q. No, west of Apple River to Dubuque.

A. The maximum grade between Freeport and Dubuque westbound is .76 of one per cent.

Q. That is the maximum?

A. Yes, sir.

Exam. Trezise: Any further questions?

Mr. Cardy: Just one question.

Exam. Trezise: Mr. Cardy.

By Mr. Cardy:

Q. Mr. Lynch, on the movement of carloads of coal from Southern Illinois to East St. Louis and St. Louis, would you say there is or is not a substantial difference in the movement of coal to St. Louis versus coal to East St. Louis, based upon your former studies?

A. I didn't get the question, sir.

Q. Take a carload of coal moving from Southern Illinois to St. Louis versus East St. Louis, would you say there is or is not a substantial difference in the transportation conditions on the movement of coal to those two points?

Mr. Zoll: I object to that question on the ground that that situation isn't here.

Exam. Trezise: No, that is not here, but it is a hypothetical question about some movement to St. Louis.

Mr. Cardy: State versus interstate traffic, that is all I am talking about.

Exam. Trezise: Go ahead, tell him about St. Louis, if [fol. 1181] you have those facts worked up.

The Witness: Well, just from my observation, why, then the difference would be that if a car was going to East St. Louis, why, we would take our own switch engine and place it. If it was going to St. Louis, we would have to give it to the Terminal Company to handle it, Terminal Railroad Association.

By Mr. Cardy:

Q. In other words, I understand your answer to be that on the delivery of coal to St. Louis and East St. Louis there is a difference in state versus interstate transportation, is that correct?

Mr. Zoll: What you want to know is whether there is a difference in transportation conditions between East St. Louis and St. Louis?

Mr. Cardy: Yes, if he knows.

The Witness. Yes, that difference that I spoke of there, that we would have to make the delivery to the Terminal Railroad Association and have them handle the cars to St. Louis.

By Mr. Cardy:

Q. That difference is brought about by the difference in delivery at terminal points?

A. It is like this gentleman asked me a little while ago, whether the difference would be like it is at Chicago and Freeport and Rockford.

Mr. Cardy: That is all.

By Mr. Stadell:

Q. I have a couple of questions. The lowest tonnage rating that you gave, as I recall it, on the line from Cen-
[fol. 1182] tralia north, from Southern Illinois, to any of these points was 4800 tons, is that right?

A. No, sir. I gave Benton to DuQuoin, 2855, and Freeport to Madison, 1595.

Q. That is in the coal field itself, the first one?

A. Yes, sir. Freeport to Madison is 1595.

Q. Well, I am restricting this to the Illinois points.

A. Oh, yes.

Q. Restricting it to the Illinois points, that was the lowest. About how many cars per train would you be able to haul with a rating like that?

[fol. 1183] A. With 4800?

Q. Yes; about 60 cars?

A. 60, 75, 80, depending on the tonnage, gross tonnage, and then there is a car factor in that, as I explained a while ago. This is called equated tonnage. This isn't actual tonnage.

Q. Well, are these the adjusted tonnage ratings?

A. Adjusted ratings.

Q. These are the adjusted ratings?

A. Yes, sir.

Q. The ratings without the adjustment factor would be higher than these?

A. Without the adjustment factor in them they would be higher, yes, sir. You see, what we do, we add a certain car factor for each car that is handled in a train.

Q. That is more or less an arbitrary?

A. Yes, sir. That is based on wheel bar friction and drawbar friction, and other things that go to affect it.

Q. That would depend on what line of road you would be operating on, in other words, the adjustment would be different?

A. Yes, sir. The adjustment factor is not nearly as high in rolling territory as it is on straight level where there is a pull.

Q. Take the tonnage rating here, as I understood you to say, the ruling grade between Centralia and Decatur was .76 of 1 per cent?

[fol. 1184] A. Yes, sir.

Q. Between Decatur and Clinton it is .51 of 1 per cent?

A. Decatur and Clinton?

Q. Yes.

A. It is .51 of 1 per cent.

Q. Now, you use the same type of locomotive between Centralia and Decatur as you do between Decatur and Clinton?

A. Yes.

Q. That is, it has the same tractive effort?

A. Yes, sir.

Q. But the tonnage rating of that locomotive in the stretch of track between Centralia and Decatur over which you have this .76 of 1 per cent grade is but 4800 tons, while on the stretch of track between Decatur and Clinton where you have the .51 of 1 per cent grade it is 7,000 tons?

A. I must have gotten those figures twisted, or you had them twisted for me, one or the other now, because the tonnage rating from Centralia to Decatur is 4800 and from Decatur to Clinton it is 7,000.

Q. That is right. That is what I gave you.

A. Now, Centralia to Decatur, the ruling grade is .76 of 1, and from Decatur to Clinton it is .51 of 1.

Q. Yes, those are the figures I gave you.

A. Are they?

Q. Yes. First, I will ask you, you said that with the [fol. 1185] tonnage rating of 4800 tons between Decatur and Clinton, between which you have the .51 of 1 per cent ruling

grade, you could haul between 60 and 85 cars. Now, how many cars will you haul between Decatur and Clinton where you have the 7,000 ton rating?

A. We wouldn't haul very many more. As a matter of fact, we wouldn't have the business available between those points. This is just tonnage rating. It isn't what they regularly handle there. You take what they regularly handle there on the whole Clinton district, the average is 3502 tons. Then, another thing, while we have these tonnage ratings to show the maximum that can be pulled by the engine, why, we have to be governed by the siding facilities for the meeting of trains. It isn't always a question of just how much you can pull that you put behind an engine, just what can be pulled by it.

Q. Normally, if you had the business, if you could haul 60 to 85 cars on a train where you had a tonnage rating on account of the grade, of 4800 tons, you could haul a considerable greater number of cars per train with the same engine over a stretch of track where you had a .51 of 1 per cent of grade than you could over a .78 of 1 per cent grade, couldn't you?

A. Yes, sir.

Q. But without knowing all of the conditions over the railroad, such as you mentioned here, the siding, capacity, and the yard capacity, and the operating conditions, these tonnage ratings and tractive effort of locomotives and so [fol. 1186] forth don't mean very much, do they, I mean to a party that would be reading a record such as this, without knowing all these other conditions?

A. Oh, just taking the tonnage rating by itself, why, then that wouldn't mean anything to somebody that wasn't familiar with the railroad.

Q. Well, anyone familiar with the railroad, in order to know the actual operating conditions there would have to take into consideration the number of trains operated over the stretch of track?

A. Yes, density of traffic is a factor.

Q. And a very important factor, isn't it?

A. Yes, sir.

Q. You have to take into consideration the number of cars per train?

A. Because of your siding capacity, and the business available would be the main factor. We have got some

locomotives that can pull just plenty of cars, but it is a question of what we have available.

Q. And in determining these transportation conditions you would have to take into consideration the character of the territory through which you operate, wouldn't you?

A. What do you mean by "character"?

Q. Well, whether you had a double line or single line of track and whether you were operating over bridges, particularly if you were operating over a bridge jointly with [fol. 1187] some other line, that would affect your operation, wouldn't it?

A. Well, if your traffic was too dense for the single track line, it would affect it, yes.

Q. Does the Illinois Central own the bridge between East Dubuque and Dubuque?

A. I don't know, sir.

Q. The Illinois Central does not reach Clinton, Iowa, or Davenport, or any of these other west bank Mississippi Iowa points?

A. No, sir.

By Mr. Zoll:

Q. Mr. Lynch, in answer to one of Mr. Stadell's questions, I understood you to say that the tonnage ratings which you gave were adjusted, is that right? Are those adjusted or equated ratings, is that what you said?

A. No, this is a flat rating that we use for the purpose of arriving at the tonnage on an equated or adjusted basis. You see, you can't figure this as an equated rating until you know how many cars you are going to put in the train, because you add to the car the car factor for each car that you have in the train. I must have misstated it.

Q. This is the unadjusted figure, is that right?

A. That is the total potential loaded car figure established with dynamometer cars.

Q. I understood you to say this was an equated figure. I was wondering if you had done something to this figure.

A. That is what they call them, the equated figures. But [fol. 1188] a car factor isn't figured in there. That is all you would have to know, how many cars you handled, before you could get that car factor.

Q. This is then unadjusted?

A. That is the total potential of the locomotive. If I stated it in any other way, I must have misstated it.

Mr. Kaylor: Mr. Lynch, you in your work are on the Clinton division and none of your work on the Illinois Central is on the Centralia division?

The Witness: No, sir, I was in there on that railroad for six years.

Mr. Kaylor: How long were you over on the main line division?

The Witness: On the main line division, on the Vicksburg division is where I spent most of my time. I spent twenty-one years there.

Mr. Kaylor: Were you ever on the so-called Champaign division?

The Witness: No, sir. I have charge of that in my present work, but I have never worked on the Illinois division.

Mr. Kaylor: Do you think that the operation of the line from Centralia to Chicago is more economical than the line from Centralia to Dubuque?

The Witness: It depends on the volume of traffic that you would have to handle. That would be one of the governing [fol. 1189] factors.

Mr. Kaylor: Well, you have no passenger service now on the line through Clinton, do you?

The Witness: No, sir, from Centralia to Freeport.

Mr. Kaylor: But you do have passenger service on the main line?

The Witness: Yes, sir.

Mr. Kaylor: I notice that this line from Centralia though is almost as heavy a tonnage rating as some of the other lines.

The Witness: Yes, sir.

Mr. Kaylor: Now, without the passenger service on there, is there anything in the difference of cost that you have on the main line operation?

The Witness: I don't know, sir. I wouldn't be able to answer that intelligently.

Exam. Trezise: Any further questions, Mr. Vesey?

By Mr. Vesey:

Q. How do you determine, Mr. Lynch, what type of engine you use over a particular line?

A. What type?

Q. Yes, type.

A. Well, just as I said a while ago, one of the main things is what traffic you have to handle. That would be one of the things. Then after you found out what traffic you were going to have — handle, you would want to fix it so you can haul as much tonnage as possible with one locomotive, [fol. 1190] because that keeps your expense down. But another factor in connection with it is the maintenance of way department has certain restrictions on certain power over certain track and speed limits that they put on because of the particular construction.

Q. So taking all of those factors into account, you then come directly down to a system here, as far as the Illinois Central is concerned, where you have various locomotives in use, I mean different locomotives in use, different types over different sections of the railroad, isn't that true?

A. Yes.

Q. So when you give us tonnage ratings and tractive effort, they are all tied to the particular engine that you are considering at the moment, is that right?

A. Yes, sir.

Q. So if you wanted to switch the engines around, you could have different results, so far as tonnage ratings and tractive effort is concerned, wouldn't you, on any stretch of this track?

A. You might get a little difference out of that. But if you are speaking of expense, they pay the engine crew on the weight on driver, and the larger the driver the more coal it uses, and those are factors you have to consider in what it will cost you.

Q. Those are other factors?

A. Yes, sir, that enter into cost.

Q. Let me ask you, as an operating man, the figures you [fol. 1191] have given here for tractive effort and tonnage rating are just meaningless figures when it comes to appraising operating conditions over this railroad?

A. Oh, no.

Mr. Zoll: I object to that question.

Exam. Trezise: You can ask him if they are.

Mr. Vesey: I just asked him if they are.

Mr. Zoll: You are asking him if this stuff he has given is meaningless?

Mr. Vesey: That is right, when it comes to showing operating conditions over the railroad.

The Witness: I don't agree with you.

By Mr. Vesey:

Q. You think these figures you have given for tonnage ratings and tractive effort in and of themselves are sufficient to enable a disinterested person to make a fair appraisal of the operating conditions over your railroad on any given stretch of track compared with another?

A. No, sir, I don't agree with that.

Exam. Trezise: Now, you just give your testimony. Don't agree or disagree. He is asking you to tell him. Don't agree or disagree.

The Witness: The question as I got it was as to whether you could take these tonnage ratings, whether a disinterested person could take these tonnage ratings and arrive at some conclusion in connection with the cost of operation [fol. 1192] or the method of operation?

By Mr. Vesey:

Q. And arrive at a conclusion with respect to the operating conditions over any given section of your track as against another section.

A. You would have to take the tonnage ratings over a particular section of track, and if the man on the stand this morning from the Burlington wanted to make a comparison, he would have to select a piece of his track and make a comparison. But these particular figures would not do you as an attorney any special good in considering the railroad operation.

Q. What good would they do the Interstate Commerce Commission?

Mr. Zoll: I object to that question on the ground it is up to the Commission to say.

Mr. Vesey: I am just trying to find out what we have got here.

Exam. Trezise: Well now, hadn't we better ask him whether he can appraise transportation conditions by that factor? Is that a factor by which you can appraise the transportation conditions?

The Witness: Yes, sir, that is one of the factors.

Exam. Trezise: It is one of the factors.

The Witness: Yes, sir.

Exam. Trezise: Does that help you any there? It is one of the factors that he uses.

By Mr. Vesey:

Q. All right, that is one of them. Now, I gather from [fol. 1193] your testimony there are certain others, is that right?

A. Certain other what?

Q. Certain other factors that you would have to appraise in determining operating conditions on this railroad.

A. Oh, yes, sir. You can't just take any one particular item and figure on it.

Q. As your testimony stands, as you have given it this morning, have you given us all of the facts which are pertinent and germane to a determination of operating conditions on this railroad?

A. As far as I know, I have. I haven't tried to hold out anything on you, if that is what you mean.

Q. I mean, have we got them all or not?

A. Oh, I don't know.

Q. You don't know whether we have or not?

A. No.

Q. You mean you suspect you may have left something out?

A. No, sir, I don't think so.

Q. What do you mean then, you don't know whether we have got them all or not?

A. It would depend on what you considered, what was that word you used, germane.

Q. Yes, everything that is pertinent to determining operating conditions.

[fol. 1194] A. As far as I know, you have, as far as operating conditions from a railroad standpoint, but I don't know whether that will suit you or not. Apparently up to now it doesn't.

Exam. Trezise: Can you make an approximate appraisal of your transportation conditions from the type of evidence you have given?

The Witness: Yes, I think any railroad man can take the figures you have got in there and decide what kind of a railroad you have got. That is the dope we use every day,

but I am not saying that would be exactly the information Mr. Vesey wants over there, because I don't know what kind of a railroad man he is. He might be the same kind of a railroad man as I am a lawyer. I didn't mean to be funny about it at all, sir, but I have just told you the truth about everything that I have been asked, so far as I know.

By Mr. Vesey:

Q. Let me ask you a question. Now, you remember your testimony that you have given this morning. I want to ask you this question, Mr. Lynch: If I give you the tonnage ratings and tractive efforts of the several locomotives over a given railroad A and the same data with respect to another given railroad B—it happens that you have never been on either one of those two railroad lines—do you mean to tell me that from those facts that you can make a fair appraisal of the operating conditions on those two railroads?

A. No, I wouldn't say that, just taking the tonnage [fol. 1195] ratings. Of course, you would have to have your grade conditions and——

Q. Suppose I give you the third factor then, the ruling grade.

A. The ruling grade and the tonnage figure, then you would want the actual tonnage handled.

Q. What else would you want, to determine the operating conditions on those two railroads? Is that all you would need?

A. I think that is most of it.

Q. You could then give an appraisal of the operating conditions of those two roads?

A. What do you mean by appraisals—drawing a comparison between them?

Q. Tell us whether they were the same, the extent to which they differed, and the like, could you do that on those facts?

A. Oh, yes, when you set those figures up side by side, then they speak for themselves. You could tell what the difference was then immediately.

Q. That is all you would need?

A. Well, it would depend on what you are seeking, as to whether that is all you need or not. If I was going to analyze a whole operation, why, I would want more figures than that.

Q. I am just talking about operating conditions on those two roads.

A. But operating conditions covers a multitude of sins. That covers a lot of things.

Q. What operating conditions couldn't you determine [fol. 1196] from those three figures I have just given you, tractive effort, tonnage rating, ruling grade, now, to determine the operating conditions of those two railroads A and B, what else would you have to have?

A. What do you mean by operating conditions?

Q. Just exactly what you meant when you said operating conditions this morning, when you first sat on that chair. Now, what else do you need to determine the operating conditions on those two roads?

A. I wouldn't need anything else, I don't think, just to set up those figures and make a comparison between the two of them.

Q. And that would tell you the operating conditions of A as against B?

A. The tonnage figures, the tractive effort and the grade.

Q. That would tell you what the operating conditions on those two roads were, would it?

Exam. Trezise: Well, is there anything else that would help you?

Mr. Vesey: If there is anything else he has to have, that is what I want to find out.

Exam. Trezise: Would it help you any to be familiar with the railroad and see it?

The Witness: Oh, yes.

By Mr. Vesey:

Q. Would you have to see it?

A. I wouldn't want to pass on anything sight unseen, by [fol. 1197] just taking those figures.

Q. Why wouldn't you?

A. I don't think it would be good judgment.

Q. Well, what is wrong with it? That is what I want to find out. Let me put it to you this way: In other words, taking that answer, your last answer, in your opinion you would not think it good judgment for the Interstate Commerce Commission to take those three factors and pass on the operating conditions of your road as against another road?

A. They don't do it. They have got 3300 factors or they have got dope of all kinds from all railroads. There is a regular set of reports made up that goes to the Commission.

Q. But just coming down to your testimony, you would say it would not be good judgment to make an appraisal on the basis of the factors you have given us this morning, just those factors alone?

A. In other words, you want me to say that the testimony I gave isn't any good for the purpose for which it was given. Is that what you want me to say?

Q. I am just asking you to give us your opinion.

A. I will say the questions I answered for the purpose they were given, I think were all right.

Q. And that purpose was what?

A. That purpose was to furnish to the Commission here and the other parties that are here interested information [fol. 1198] as to the operation of the Illinois Central.

Mr. Vesey: I think that is all.

The Witness: And this was in answer to the questions asked. I didn't prompt any of this stuff, to start with.

By Mr. Stadell:

Q. I have one more question. Wouldn't you say that the degree of curvature on the railroad was a very important element affecting the operation, whether you had a two degree curve or 15 degree curve?

A. How do you mean, an important element?

Q. As affecting the operation of the train, the number of cars you could haul, and the speed at which you could operate, and so forth?

A. It depends on what curvature you have and what elevation that curve is set up for, what speed the elevation is in the curve. I don't know the details of it, but the maintenance of way people, the engineering department, they set up the elevations in curves according to the degree of the curvature.

Q. The greater the curve generally the slower the speed of the train?

A. Yes, sir. We have some yard tracks where you have to just creep around. We don't have anything like that on the main line. There are some pieces of track that have more curvature in them than others, just as there are more grades in some than in others.

Q. The degree of curvature would affect the number of [fol. 199] cars in a train you could haul?

A. I imagine in using dynamometer cars, you would find you could haul less cars on a certain stretch of curvature than you could in another stretch of straight railroad.

Q. The greater degree of curvature the greater maintenance expense of the railroad, the roadbed and the track, isn't that true?

A. I am not in a position to say. That is in a department I have never worked in.

Q. You do know the greater degree of curvature the greater the friction is on the wheels on the track?

A. That is an allowance that is made for the drawbar and wheel friction. That is what the car factor is for.

Q. That would affect your tonnage rating? That is the reason you have this adjustment?

A. Yes, sir. For each car that is handled on the train you would allow this car factor.

Q. So the element of curvature is taken into consideration by your maintenance of way department in determining what trains you can operate over the road and how many cars in a train and at what speed you operate?

A. How many cars per train?

Q. Yes.

A. That would depend on what the dynamometer car test showed.

Q. That element is taken into consideration by your [fol. 1200] maintenance of way department?

A. They find it highly desirable to get away from curves as far as possible, yes, sir.

Mr. Stadell: That is all.

Exam. Trezise: If there are no further questions, we will adjourn until two o'clock, and you may be excused, Mr. Lynch.

(Witness excused.)

(At 12:30 o'clock P. M. recess taken to 2:00 o'clock P. M.)

Afternoon Session

The hearing was resumed pursuant to recess:

2:00 o'clock P. M.

Exam. Trezise: All right, gentlemen, when you are ready we will proceed.

Mr. Hunter: Mr. Whalen, please.

W. J. WHALEN was sworn and testified as follows:

Direct examination.

By Mr. Hunter:

Q. Will you give your name, occupation and business address, please?

A. W. J. Whalen, superintendent of the La Crosse River Division of the Milwaukee road, headquarters at La Crosse, Wisconsin.

Q. Mr. Whalen, you are testifying here on behalf of the Milwaukee Railroad trustees?

A. Yes, sir.

Q. And will you state briefly your railroad experience? [fol. 1201] A. Thirty-seven years of service with the Milwaukee road and the last twenty years of that service being in the operating department as a trainmaster and superintendent, assistant superintendent.

Q. Have you had any experience on the Terre Haute division of the Milwaukee road?

A. I was superintendent on that division for four years.

Q. Is that the division that serves the coal fields in Indiana?

A. Yes, sir.

Q. What coal fields does the Milwaukee serve in Indiana?

A. The Linton field and the Clinton field.

Q. It serves none of the coal fields in Illinois?

A. No, sir.

Q. What other divisions have you had experience on?

A. Assistant superintendent on the Iowa division between Savanna, Illinois, and Omaha; superintendent on the division between Chicago and Savanna, and also from Savanna to La Crosse via Dubuque, and on the line from Minneapolis to Mobridge, South Dakota, and on the line between Milwaukee and Minneapolis, with the diverging lines; and also on the line to Davenport, Rock Island and Moline on the Illinois and also the line on the Iowa side of the river.

Q. Are you familiar with the operating conditions encountered in transporting coal from the Indiana coal fields served by the Milwaukee to points in Northern Illinois and [fol. 1202] Southern Wisconsin and Eastern Iowa involved in this proceeding?

A. Yes, sir.

Q. Will you go ahead in your own way, Mr. Whalen, and tell us first how coal would be handled from your points of origin in the Brazil-Clinton field destined to the so-called suspended points, on the one hand, and then compare it with the transporting of coal to the comparative points on the other hand.

A. Coal from the Brazil-Clinton field on the Milwaukee road is handled into West Clinton, Indiana, where we have a classification yard. That coal is then handled to Chicago via the Terre Haute division of the Milwaukee road, that is, to Bensenville yard, which is our Chicago terminal.

Q. Will you refer to Exhibit 6, and if the parties will refer to Exhibit 6 I think they will be able to follow Mr. Whalen better.

A. The coal is handled from West Clinton, Indiana, along the line shown in green, through the terminal Faithorn, which is 121 miles north of West Clinton, thence to Bensenville terminal, a distance of approximately 145 miles, which is the Chicago terminal of the Milwaukee railroad.

Then coal for points Byron, Forreston, Freeport, Rockford, is handled westward from Bensenville on the line extending from Bensenville to Savanna, Illinois, the Byron coal being set out by the trains operating through that territory at Byron, likewise the Forreston coal set out at For- [fol. 1203] reston. The coal for Freeport is set out at Kittredge and handled by a Davenport-Milwaukee train to Freeport. However, we have one train that handles the coal direct from Kittredge to Freeport, then picks up and continues through to Savanna. That takes care of the suspended points, in so far as Indiana coal is concerned.

Mr. Bather: You didn't mention Rockford. How do you handle Rockford coal?

The Witness: Rockford coal is set out at Davis Junction, then handled by another line which operates north from Mendota through Rockford—or though Davis Junction to Rockford and Beloit.

In so far as the comparative points are concerned, first the Chicago coal is handled direct into our Bensenville yard by our crews from the Terre Haute territory. Then the coal for Beloit is set out at Davis Junction on the Chicago-Savanna line, picked up by another crew and handled with the Rockford coal through Rockford to Beloit. The Davenport, Dubuque and Clinton, also Moline, Rock Island and

Savanna coal are handled on the division from Chicago which passes Davis Junction, and at Kittredge the coal for Davenport, Rock Island, Moline, and at times the coal for Clinton is set out at those points. At other times the Clinton coal is handled to Savanna, thence down the Iowa side of the river to Clinton.

The Dubuque coal is handled to Savanna and there placed on a train which operates from Savanna through Dubuque [fol. 1204] and beyond. The coal for Janesville originating in Indiana is handled north of Chicago on the Milwaukee division to a connection for Janesville; likewise Madison coal is handled in this same manner. Burlington, Wisconsin coal is also handled on the division from Chicago to Milwaukee and set out at Sturtevant, where it is handled to Burlington on a diverging line. I believe that takes in the suspended and comparative points mentioned.

By Mr. Hunter:

Q. Will you explain briefly what class of power the Milwaukee railroad uses in handling these coal shipments from the Indiana fields to the points you have mentioned, all of which I assume are located on the Milwaukee railroad?

A. Correct. The engine used to the greatest extent in the coal territory is what we call our L-3 type engine and we have boosters on them, and they have a 62,000 pounds tractive effort, but with the booster cut in they have 73,485 pounds tractive effort.

However, we do have some engines, but they are in the minority, which have a tractive effort of 57,400. These engines with the boosters will handle from West Clinton, Indiana, the classification yard of the Brazil-Clinton Field, to Hallock, a distance of about 62 miles, a train of 5800 tons; and from Hallock, Illinois, to Faithorn, Illinois, a distance of about 61 miles, will handle a train of 6400 tons; then from Faithorn, Illinois, to Bensenville, our Chicago yard, either [fol. 1205] the engine with the 57,000 pounds tractive effort, or the engine with the 62,000 pounds, without the booster, or 73,000 with the booster, will handle a train of 90 cars of mixed loads and empties, as the grades do not affect us, but it is a 90 to 95 car train that is operated in that section.

Q. Now, these tonnage ratings you have referred to, are those actual ratings?

A. Those are actual, and I would say that the tonnage figures I gave, in my experience down there, are handled

90 to 95 per cent, in so far as all northward trains operated are concerned.

Q. Now, what is the other tonnage rating referred to here by some of the other witnesses? You heard the testimony this morning of Mr. Pearson of the Burlington and Mr. Lynch of the Illinois Central.

A. Well, a factor tonnage is a tonnage some railroads use. However, we don't use it. That is an added percentage which they give depending upon the length of the train, figuring some wheel resistance in there. However, the tonnage figures that I gave are the tons that the engine is capable of handling and usually does handle.

Q. Now, Mr. Whalen, does the Milwaukee railroad operate any passenger service on its Terre Haute branch up into Chicago?

A. From West Clinton, the terminal we have been speaking about, to Chicago there is no passenger service operated on that line.

Q. Will you continue.

[fol. 1206] A. Then from Bensenville to Savanna we have the S-2 type locomotive, which is both a powerful and a high speed locomotive, with a tractive effort of 70,816 pounds, and on that division we handle with that type of engine 4500 tons; and with the L-3 type of engine, without the booster, 3350 tons. Then from Ashdale, which is the point we leave our east and west line to go to Davenport, Rock Island and Moline——

Q. Mr. Whalen, before you get to that, the line from Chicago to Savanna is a main double track line?

A. Main line, double track, high speed track.

Q. How about the Terre Haute division?

A. The Terre Haute division, that has the necessary amount of double track to furnish a good operation. We have intermittent stretches of double and single track in order to take care of the traffic that we have.

Q. Go ahead.

A. From Ashdale to Nahant, which is the route handled for Rock Island, Moline and Davenport coal, we operate the L-3 type of locomotive handling 3950 tons. Then we also have this line——

Q. How many cars will an L-3 handle?

A. Well, those are mixed trains, of course, and I would say that you would figure about 100 cars in that 3950, figur-

ing that there is both mixed loads and empties in a train that is operating in that territory.

[fol. 1207] Q. Before we overlook it, does the Milwaukee handle any solid train loads from the Indiana fields?

A. We start out in some cases with solid trainloads of coal, but very few of the trains reach the north terminal Faithorn with solid trainloads, as we try to line up our trains so they can pick up at interchange points and make the pick up most economically. Then the Savanna coal continues through on the line from Chicago to Savanna, and then from Savanna to Dubuque, that being a water grade, with a smaller type of locomotive, having a tractive effort of about 54,000. We can handle up to 6,000 tons on that line.

Then on the line from Davis Junction to Rockford we can handle 5,000 tons; from Rockford to Beloit, 3,000 tons; continuing from Beloit to Janesville, 2800 tons. Then on the coal going to Burlington, that is handled on the main line trains, handling up to 4500 tons, as far as Sturtevant.

Q. Coal to Beloit is handled through Rockford from the Indiana fields?

A. That is correct.

Q. Is it handled the same way from the Illinois fields?

A. The Illinois fields, some of that coal is handled via the north line.

Mr. Bather: What is the north line?

The Witness: The north line?

Mr. Bather: Yes, sir.

[fol. 1208] The Witness: Your Rockford coal is all handled through Davis Junction, but you have some Beloit coal that moves through Rondout and over in that direction.

Mr. Zoll: Did you say that most of it moves through Davis Junction?

The Witness: That is correct.

Mr. Zoll: To Beloit.

By Mr. Hunter:

Q. Through Davis Junction and Rockford to Beloit?

A. Yes, sir.

Mr. Bather: What about coal delivered to you by the Illinois Central at Mendota?

Mr. Hunter: We are coming to that. We covered the Indiana movement first. Then we will come to Illinois. We might handle it right now.

The Witness: Your Indiana coal, I would say, very close to 100 per cent is handled via Rockford, the same as your Illinois coal is, through Davis Junction and Rockford to Beloit.

By Mr. Hunter:

Q. And very little would be handled by the north line through Sturtevant?

A. That is riglit, but considerable for Janesville.

Q. Have you told us about the power used north of Rockford?

A. We use the L-2 locomotive with 54,700 tractive effort. They are used from Davis Junction to Rockford and to Beloit, to Janesville.

[fol. 1209] Q. Have you explained about the power that is used if Indiana coal is handled by the north line to Sturtevant?

A. That is right.

Q. You have gone into that?

A. Yes.

Q. How would the Milwaukee handle Illinois coal destined to the suspended and comparative points?

A. Illinois coal for Byron——

Q. Where would the Milwaukee receive it?

A. They would receive that at Mendota and handle it to Davis Junction and then west on our Chicago-Savanna line to Byron. Forrestón would be the same. Freeport would be the same as I have told you with reference to the handling of Indiana coal from Davis Junction west. Rockford would be handled from Davis Junction north to Rockford. In fact, the Illinois coal destined to Rockford, Beloit, Savanna, Dubuque, Davenport, Rock Island, Moline, Clinton, Freeport, from its arrival at Davis Junction, would receive the same handling as the Indiana coal destined to those points. That is from the arrival of the Illinois coal at Davis Junction.

Mr. Bather: Mr. Hunter, I am not quite clear on that answer. Do you handle all of that Illinois coal through Davis Junction?

The Witness: By far the biggest percentage is received at Mendota. There is some received at Bensenville and [fol. 1210] occasionally a few cars at Spaulding where the

E. J. & E. connects. But what I was getting at was when this coal from the south reaches Davis Junction, it is put in the same trains, on practically the same trains, should be the same trains as the Indiana coal moving into these various points.

Mr. Bather: Yes, but I am talking about the destination points. Do you handle all of that coal into Davis Junction and reclassify it there?

The Witness: From the south you mean?

Mr. Bather: Yes.

The Witness: Yes.

Mr. Zoll: Right there, Mr. Hunter, might I ask one question on that same line.

Mr. Hunter: Yes.

By Mr. Zoll:

Q. You say you get coal from the Illinois Central at Mendota?

A. That is right.

Q. Do you get any at Forreston?

A. We get some coal at Forreston, that is right.

Q. Very much?

A. No, I wouldn't say there is a large amount. From my experience there, I wouldn't say it is very heavy.

By Mr. Hunter:

Q. Now, Mr. Whalen, will you compare the operating conditions in transporting coal from the Indiana points of origin located on the Milwaukee railroad, on the one hand, [fol. 1211] with the operating conditions in transporting coal originating in Illinois destined to the suspended and comparative points, on the other?

Mr. Stadell: You mean originating on the Milwaukee?

Mr. Hunter: There is no coal that originates in Illinois on the Milwaukee. The Milwaukee doesn't serve any points of origin in Illinois.

Mr. Stadell: You are asking him to compare the operating conditions on coal originating in Indiana on the Milwaukee going to the compared and suspended points with the operating conditions on other railroads in Illinois which transport coal from the Illinois mines to those points? Was that your question?

Mr. Hunter: I will put the question this way to amplify it.

Q. Mr. Whalen, will you compare the operating conditions in transporting coal from the Indiana origins, on the one hand, as compared with the operating conditions in transporting coal from the Illinois origins which is handled by the Milwaukee railroad from points of connection?

Mr. Bather: To where?

Mr. Hunter: To the suspended and compared points, on the other hand.

Mr. Stadell: And this is only over the Milwaukee?

Mr. Hunter: That is right, from the points of connection. [fol. 1212] The Witness: Well, from Mendota, where a good part of our Illinois coal is received in interchange, to Davis Junction our L-2 type locomotive, 54,000 tractive effort, handles 3,000 tons. That same locomotive in the Indiana territory to Bensenville would handle about 4500 tons, that is, the same locomotive traveling from the Indiana territory to Chicago as compared with the one from Mendota. But then when the coal gets to Davis Junction, the coal is handled by the same trains and in the same manner, whether it is Illinois coal or Indiana coal.

Exam. Trezise: Meaning just what there?

The Witness: Coal destined north and west of Davis Junction, arriving at Davis Junction from the Illinois interchange at Mendota, is switched right into the trains that are then handling Indiana coal for points north and west of Davis Junction.

Mr. Bather: Do you handle any Kirkland coal on that through Davis Junction?

The Witness: Due to the contract we have, we handle very little revenue coal via the Chicago, Milwaukee and Gary Railroad, which is what you refer to.

Mr. Bather: I am talking about your line from Davis Junction to ~~Kirkland, do you~~ handle any coal from Southern Illinois over that line?

The Witness: Now from Bensenville to Davis Junction via Kirkland we handle practically all of the revenue coal [fol. 1213] produced in Indiana for points north and west of Davis Junction, and whatever amount of Illinois coal is received in interchange at Chicago or in Spaulding.

Mr. Bather: I am speaking of your Indiana coal now, say to a point like Kirkland, how far east from Davis Junction do you handle coal to Davis Junction?

The Witness: How far east?

Mr. Bather: Yes.

The Witness: All of our coal is handled into Chicago and west to Kirkland and Davis Junction, with the exception of company coal, and a small amount of commercial coal, which is handled from Delmar through Joliet, Aurora, and to Kirkland, and thence to Davis Junction.

Mr. Bather: All right.

By Mr. Hunter:

Q. Now, Mr. Whalen, are the transportation conditions encountered in the movement of coal from Indiana to these points that we have been talking about as favorable as the transportation conditions encountered by the Milwaukee in handling Illinois coal from the points of connection to these destinations?

A. Well, the Mendota to Davis Junction railroad, which is a railroad over which a good portion of the Illinois produced coal must move, is not as favorable a railroad to move over in so far as handling tonnage is concerned, as the Terre Haute line.

[fol. 1214] Q. You heard the testimony of Mr. Pearson of the Burlington and of Mr. Lynch of the Illinois Central this morning, did you not, with respect to operating conditions encountered by the Burlington and the Illinois Central in transporting coal from their points of origin to these destinations, did you not?

A. Yes, sir.

Q. Could you compare or discuss briefly the conditions encountered by the Milwaukee in handling coal from the Indiana fields to these destinations as compared to the operating conditions described by Mr. Pearson and Mr. Lynch?

A. Well, in so far as the movement of Illinois coal from Mendota to Rockford is concerned, our operations and the Burlington's are almost the same, because we operate over a joint track the greater part of that distance. In so far as our operation in Indiana is concerned, from what I gained from the information, we are in a little more favorable position, I believe, than the Burlington, because of the fact that they indicated engines with 81,000 tractive effort were handling trains of approximately 6500 tons; whereas we use 73,000 tractive effort and are able to handle trains from Hallock to Faithorn of 6400 tons. We have three grades in excess of some of the grades that they

referred to. However, we get a run for some of those grades and for that reason are able to handle a heavier train. They referred to some grades of 1.6 per cent. However, .5 is our ruling grade from the Brazil-Clinton field into the [fol. 1215] Bensenville area. From Bensenville to Savanna we have some 1. per cent grades on our double track main lines, but it is a high speed railroad, and, in fact, a good part of it is 90 mile an hour track, and our coal is put in with other time freight and receive a fast move across there, rather than a heavy tonnage train movement.

Q. Have you any comment with respect to the Illinois Central's operating conditions compared with those encountered by the Milwaukee in moving coal from the Indiana fields?

Mr. Stadell: Now, I object to the witness making any comparison here between operating conditions on the Illinois Central or the Burlington and the Milwaukee. He hasn't been shown to be competent to testify with respect to the operating conditions on those railroads.

Mr. Hunter: He testified he heard Mr. Lynch's testimony.

Exam. Trezise: He can testify about the figures that are in the record. If he has any comparisons to make out of the testimony that was given, I think that would be proper, if he can make comparisons with them.

Mr. Stadell: If he is confining the comparison solely to what has been testified to, using the facts or alleged facts and testimony of those witnesses as the basis for his testimony, then I won't object.

Exam. Trezise: That is what he will do, I understand, and use his judgment.

[fol. 1216] Mr. Stadell: He is not expressing any separate facts as to operating conditions on those railroads.

Mr. Hunter: That is correct.

The Witness: I am not familiar with the operation, only from the testimony I heard, and I made notes of the Burlington testimony. I did not make notes of the Illinois Central, but from what I heard testified, I would say we are somewhat comparable.

By Mr. Hunter:

Q. You are familiar with the operating conditions north of Rockford as well as the operating conditions to Rockford?

A. That is right

Q. How do the operating conditions north of Rockford compare with the operating conditions to Rockford?

A. Well, on our tonnage, we don't handle the heavy trains north for the reason——

Q. North of Rockford, you mean?

A. To Madison and into Janesville, inasmuch as you don't have as much traffic. But we use the L-2 type of locomotive, and they can handle between 2,800 and 3,000 tons in there. So the business can be handled if available.

Mr. Bather: Now, that statement is too general, Mr. Examiner. Your tonnage from Davis Junction to Rockford greatly exceeds your tonnage from Davis Junction to Beloit.

The Witness: I was speaking of north, from Rockford [fol. 1217] north it is 2,800 to 3,000.

Mr. Bather: If you had it.

The Witness: That is right; while from Davis Junction to Rockford 5,000 tons is the most that can be capable of handled.

By Mr. Hunter:

Q. Will you state whether the operating conditions are as favorable north of Rockford as they are to Rockford?

A. Generally about the same. There is a little more grade condition which limits it or causes the difference between the 5,000 tons handled from Davis Junction to Rockford as compared with up to 3300 from Rockford to Beloit and Janesville.

Q. Have you anything else to add with respect to these matters that you have discussed?

A. I don't believe so.

Mr. Hunter: We tender Mr. Whalen for cross-examination.

Mr. Zoll: Mr. Hunter, could I ask just one question?

Mr. Hunter: Yes.

By Mr. Zoll:

Q. I wondered whether the Milwaukee serves DeKalb?

A. DeKalb, yes.

Q. Do you handle any coal there?

A. Yes, we handle coal for DeKalb, as a general rule, handled over the line from Delmar through Joliet to DeKalb. Some coal is handled from Davis Junction, if it is handled through Mendota to Davis Junction, then the [fol. 1218] crew handles that from Davis Junction back to DeKalb.

Mr. Bather: That would be coal originating on the Illinois Central or C. B. & Q.?

The Witness: That is right.

By Mr. Zoll:

Q. I didn't hear you as to how you moved your coal from Janesville to Madison, but I assume it is through Rockford?

A. That is right, provided it is received through interchange at Mendota; but if we get it at Chicago, we take it through Rondout and that section.

By Mr. Bather:

Q. Do your rates from Southern Illinois to Madison and Janesville apply through Chicago?

A. I am not familiar with the rates.

Q. Then that would be strictly an operating convenience and not based on tariff routing?

A. I am not familiar with the tariff, but I presume that is what they are based on.

By Mr. Zoll:

Q. Mr. Lynch gave some distances. Now, perhaps you can help me out. Would you know the distance on the Milwaukee from Mendota to Rockford?

A. From Mendota to Davis Junction is 42.5 miles and from Davis Junction to Rockford is 11.8 miles.

Q. Do you have it from Rockford to Beloit?

A. From Rockford to Beloit is about 20 miles—just one minute, Beloit Junction is 20 miles from Rockford.

[fol. 1219] By Mr. Bather:

Q. That is north of Beloit, isn't it?

A. Yes, but your operation—Beloit Junction is only one mile. It would be approximately 20 miles.

By Mr. Zoll:

Q. How about Beloit to Janesville?

A. Beloit to Janesville is 14 miles.

Q. Have you got Janesville to Madison there?

A. 41 miles.

Mr. Zoll: That is all I had, Mr. Examiner.

Exam. Trezise: Cross-examine.

Cross-examination.

By Mr. Moran:

Q. I have one question. Mr. Whalen, on Indiana coal from mines on the Milwaukee as well as Indiana coals from mines on the other roads in Indiana, which is picked up by the Milwaukee in Chicago or Chicago Junction and moved westward on your Savanna line, destined for Freeport, does it all move along that line and back up through Kittredge?

A. That is right.

Q. Or does some move north to Davis Junction through Rockford and Rockton and back to Freeport?

A. The movement goes through Kittredge to Freeport.

Q. None of it moves the other way?

A. None of it.

Mr. Moran: All right, that is all.

By Mr. Vesey:

Q. In other words, over the Milwaukee Rockford is not intermediate to your movement to Freeport then, is it?

[fol. 1220] A. That is right.

Mr. Vesey: That is all.

Mr. Stadell: I would like to ask a couple of questions.

Exam. Trezise: Mr. Stadell.

By Mr. Stadell:

Q. This map Exhibit No. 6 which you were asked to refer to indicates that the line of the Milwaukee from

Indiana operating through Chicago Heights to Bensenville operates through the Chicago District; is that the way it operates?

A. That is right.

Q. Through the Chicago switching district?

A. That is right.

Q. You made some reference to the coal moving in trainloads from Indiana. The normal operation generally is in mixed trains, isn't it? The coal doesn't move in solid trainloads generally, does it?

A. Not generally, no, sir.

Q. It moves in mixed trainloads with other cars and with other empties?

A. That is right, yes.

Q. That would be true from both Brazil-Clinton and Linton-Sullivan fields?

A. That is right.

Q. The Milwaukee serves mines in the Linton-Sullivan field?

A. Yes.

[fol. 1221] Q. The Milwaukee receives coal within Indiana, does it not, from other railroads that originate the coal in the Indiana groups, Brazil-Clinton and Linton-Sullivan?

A. Yes, we get some coal, but it is a small portion of the coal we handle.

Q. And the gathering service for that coal would be performed by the railroad originating it, such as the Pennsylvania or the New York Central?

A. I don't believe we get any, Mr. Stadell, from the Pennsylvania. I don't know of any. We get a little from the Monon at Midland and we get some from the lines at Terre Haute, a small amount. But they would pick up the coal and handle it to our interchange point.

Q. There is a route from mines, as I understand it, in the Brazil-Linton District served by the Pennsylvania railroad that applies via Beehunter and the Milwaukee; would you handle any coal over that route?

A. As I recall it, we wouldn't interchange over a car of any commodity to the extent of every three or four days. We don't get any interchange to amount to anything.

Q. Any coal that would originate then on the Pennsylvania would probably be sent over some other route than the Milwaukee?

A. I believe Pennsylvania is handled to Effner and then to Webster and then on to our line.

Q. Now, you referred to the fact that to Rockford, I think [fol. 1222] it was, from Davis Junction to Rockford that you could haul 5,000 tons and then you reduced the tonnage from Rockford to Beloit to 3,000, and then again from Beloit to Janesville to 2800. Is that reduction due to the grade conditions that you encounter there?

A. That is the biggest factor.

Q. And in talking about the grades and making some comparison between the grades on the Burlington and the grades on the Milwaukee, you stated that you were in somewhat better position because you could get a run for these grades. Would you say in view of that statement that the location of the grades was important in determining the operating conditions on a given railroad?

A. Yes.

Q. In other words, whether the grade was located at the foot of a hill or at the bottom of a hill or on top of a hill, that is, I mean on top of a grade or at the bottom of the grade?

A. One thing that enters into it is the momentum you have in approaching the grade. If you are slowed down by other grades, you don't have the momentom which carries you up a good part of the hill, if you actually have a good run.

Q. So that a .5 per cent grade on one railroad, merely to compare a grade of .5 per cent on one railroad with .5 per cent grade on another railroad would mean nothing unless you knew something about the location of those grades?

[fol. 1223] A. Together with what tonnage they are actually handling over it.

Q. You referred to your line from Bensenville to Savanna, I think it was, being a high speed railroad and you could operate 90 miles an hour. You did not mean to imply you are operating your freight trains at 90 miles an hour?

A. That is the maximum speed for passenger trains.

Q. Your streamliners?

A. That is right.

Q. And your freight trains, of course, would operate at a much lower rate of speed?

A. I believe it is 70 miles, if my memory serves me right —no, 60.

Q. That is your schedule?

A. Yes.

Q. All the way through from Bensenville to Savanna?

A. From Bensenville to Savanna—well, you have a few minor restrictions, but the 60 miles per hour from Bensenville to Savanna applies, with the exception of the restrictions of municipalities or possibly a sharp curve or something that might enter into it; I don't know of any there, but you are going through your towns and that would restrict you.

Q. And you made some remark about there being no passenger service from West Clinton to Bensenville. I take it from that, that you consider the existence or non-[fol. 1224] existence of passenger service as another important element to be taken into consideration in judging your freight train conditions or operating conditions?

A. It is helpful.

Q. In order to draw a proper comparison between the operating conditions on one railroad versus those on another railroad you would have to know something about the amount of passenger service operated on those two railroads?

A. That would enter into it.

Q. What railroads does the Milwaukee interchange with at Mendota?

A. The Illinois Central and C. B. & Q.

Q. Those are the only two?

A. Yes.

Q. Where would you receive coal from other lines that might originate in the Princeton, Indiana district going to the suspended Northern Illinois points?

A. Well, we should receive it at Chicago Heights, I presume, from the C. & E. I. and in our Chicago terminal, at the Bensenville yard.

Q. From one of the Belt lines?

A. Yes, I believe so.

Q. Those Belt lines wouldn't originate it; it would originate on some trunk line railroad and be brought into the Chicago district?

[fol. 1225] A. That is right.

Q. You referred to tonnage rating here of about 4500 tons, I think it was, from your West Clinton yard to Bensenville. Approximately how many solid cars, if you had a solid trainload of coal, how many cars would that be, taking your gross tonnage of car content?

A. It would be about 65 cars, I would say. That 4500 tons reference though was made with reference to the L-3 engine, which is not a regular operator there.

Q. What would be the number of cars you could haul with the L-3 type approximately from West Clinton?

A. I would say between 85 and 90.

Q. And that is considering a solid trainload of coal, not a mixed trainload?

A. Pretty much a solid trainload.

Mr. Stadell: That is all I have. Thank you very much.

Mr. Cardy: Just one or two questions.

Exam. Trezise: Mr. Cardy.

By Mr. Cardy:

Q. Mr. Whalen, as I understand it, your assembly yard in the Clinton district is West Clinton, is that right?

A. That is right.

Q. About how many mines do you serve in your Clinton district?

A. About five.

Q. And about what is the average distance of the mines from the assembly line?

[fol. 1226] A. We have one located within possibly a thousand feet of our yard and two that would be about five miles, and the fourth and fifth one would be about thirteen miles.

Q. Now, the C. & E. I. and other roads also serve that district. Do you know about how many mines are located in the district which are off your line and not served by the Milwaukee, or have you that knowledge?

A. I just know of one that is in that territory that is served by the C. & E. I.

Q. And what is the assembly yard for their coal? Is it Jackson yard?

A. That is right.

Q. About how far is that mine from the Jackson yard?

A. I would just have to make an estimate; probably 15 miles.

Q. Now, the situation with respect to the Linton district, where is your assembly yard there?

A. In the Clinton district?

Q. No, in the Linton.

A. In the Linton district, Latta, Indiana.

Q. How many mines there?

A. I would say in the neighborhood of 22, 23.

Q. Can you give us the approximate distance?

A. I would say the farthest are probably 14 to 15 miles, and some of them much closer, in fact, right near the yard.

Q. Now, the C. M. St. P. & P. from the Linton district to [fol. 1227] Chicago Heights parallels the C. & E. I. practically?

A. Yes, sir, that is correct.

Q. The distance is about 20 miles and runs through substantially the same territory, is that true?

A. North of Terre Haute, yes.

Q. On traffic, we will say, originating on the C. & E. I., going to the suspended territory, some of it is delivered to you at Chicago Heights and delivered to destination, is that right?

A. Yes, sir.

Q. Now, will you state approximately what is the coal tonnage handled from the Indiana mines on the C. M. St. P. & P. going to Chicago, about what is the tonnage of coal compared with other traffic?

A. Oh, that would have to be purely a guess.

Q. In other words, the piece of track between Linton and Chicago is the old Terre Haute and Southeastern which is strictly a coal carrying line, isn't that true?

A. It was, but it has changed its picture.

Q. In other words, since the Milwaukee acquired it, as shown by some of these facts, 99 per cent of the traffic on the Terre Haute and Southeastern was coal at the time you acquired it, is that substantially true?

A. I believe you are probably nearer right.

Q. But since then it has changed and you couldn't give us [fol. 1228] the percentage now?

A. No. We do heavy time freight business down there and I wouldn't say just what percentage.

Q. Where do you deliver traffic destined to Dixon, Illinois, what connecting line?

A. I presume Forreston would be the connecting point. I am not certain.

Q. What would be the road, if you know?

A. I am not certain about that.

Mr. Cardy: All right, that is all.

Mr. Stadell: I have just a couple of other questions, if I may, in view of Mr. Cardy's questions.

Exam. Trezise: Mr. Stadell.

By Mr. Stadell:

Q. You said one of the mines in the Brazil-Clinton District was approximately 13 miles from the West Clinton yard?

A. Yes.

Q. How do you perform that service? Is that a switch engine service or a road haul engine or what?

A. We have what are known as combination yard and mine runs, and they classify the trains and then go out and get this business, whatever is available.

Q. You referred to some of the mines in the Linton-Sullivan Field being 14 miles from Latta; how close is the nearest mine to Latta?

[fol. 1229] A. To Latta?

Q. Yes.

A. We have one at Coalmont.

Q. Could you give us the distance from some of these several mines you stated were in the Linton-Sullivan District to Latta?

A. I believe I can come quite close, although I haven't the exact information. We have a mine at Coalmont which is 4 miles from Latta; and we have mines about 7 miles west and south.

Q. How many mines?

A. I think there are three or four in there. Then we have Vigo mine, 5.9 miles; Minnehaha, 6.8 miles; Glendora is about 8 or 9 miles; Robinhood I would judge is about 7½ miles. Then we have the Central City, which is about 2 miles, I believe, south. Then we have another one, I can't recall the name offhand, about 3 miles south. Then we have the Maunee mine about 10 miles, and there are a couple of new mines which have been put up there since I left there, and I can't say just where they are with reference to this Maunee mine. Then north we also have Keller and Blackhawk mine, which I believe are considered in the Brazil-Clinton Field.

Q. They are in the Linton-Sullivan District.

A. Linton-Sullivan?

Q. Yes, they are clear up at the north end of the district.

A. I want to qualify that with reference to those two mines. They are not taken to Latta, but those are picked [fol. 1230] up and handled through as north trains or some cars taken off and others added to at West Clinton. But they don't go into the Latta classification.

Q. And is the service from all of these mines performed by switch engines or by roadhaul engines?

A. They are like the Clinton district yards, they are combination yard and mine run engines. The only mines handled with road crews at any time are the Keller, Maunee 20 and Blackhawk mines.

Q. Could you give us the grades on any of these lines?

A. Well, offhand, with this same type of locomotive that we handle 5800 and 6400 tons on the north end, we go out of Latta with about 8,000 tons.

Q. That is out of the assembly point?

A. That is from the assembly point, 8400 tons; and due to the fact that it is a descending grade in the direction the traffic is moving, we are able to pick up at Latta or at Keller or at Maunee 20 mine, and Blackhawk, and we have handled as much as 20,000 tons into Terre Haute. Then, of course, a good part of that traffic is destined to local industries at Terre Haute or at Junction points. Then from there north we use this same L-3 with a booster and it is able to handle 5300 tons to West Clinton.

Q. What I was interested in getting was the grade on these lines running from the assembly yard out to the mines. [fol. 1231] A. There is only one bad grade or one rough grade for a distance of about a mile and a half, as I recall it, and that is on the New Hope, Friar Tuck lead. Otherwise we are able to handle a fairly heavy cut. Now, from Linton to Latta we have handled up to 3200 tons with our mine engines, coming back from the mines.

Q. Could you furnish for the record the grades on these lines from these mines to the assembly point Latta and also to West Clinton?

A. I presume we have those, but I might add that the grade on those doesn't enter into it so much, because you go out and pull in, bring in the mine's business, and it is only the unusual case where you get enough where your grades actually affect your transportation to the extent you have to go back after a second trip.

Q. Will you furnish that information?

Exam. Trezise: Do you wish to furnish that, Mr. Hunter?

Mr. Hunter: I don't see the materiality of it myself. Do you, Mr. Whalen?

The Witness: For example, the grades in the Submarine mine in the West Clinton District, they never do produce enough to put forth the effort the locomotive is capable of putting forth. The same would be true of very many, with the exception of this one territory from Linton to Latta, where I said 3200 tons was all that we were able to handle.

[fol. 1232] Mr. Stadell: Well, I would like to have the record contain that information. If Mr. Hunter doesn't want to furnish it, of course——

Mr. Hunter: You didn't ask for it from the other districts in Illinois, and I don't see what good it would do to have it just from the Indiana fields, that is, to the concentration assembly points. If you have it only from the Indiana field without similar information from the Illinois group, which you didn't request, I don't see what good it would do.

Mr. Moran: I submit from the witness' answers to the last two questions of Mr. Stadell that it is wholly material.

Exam. Trezise: Do you want to furnish it or do you prefer not to furnish it? That is the only question.

Mr. Hunter: Well, I would like to consider that with Mr. Whalen.

Exam. Trezise: Well, you consider that, then.

Mr. Hunter: We will give an answer before we leave.

Exam. Trezise: Do we have any further questions?

Mr. Hunter: I would like to ask one question on redirect, if I may.

Exam. Trezise: All right.

Redirect examination.

By Mr. Hunter:

Q. Mr. Whalen, is the Terre Haute line tangent as a general proposition?

A. Well, to be honest with you, in my thirty-three years [fol. 1233] of experience, I have never seen a railroad with as straight a line as the Terre Haute is in the territory from West Clinton to Faithorn. Two degrees is the heaviest curve we have, and we have about 70 miles of railroad with only .30 net curve in it. It is an unusually straight line.

It is of recent construction and they followed a very good line.

Q. How do the operating conditions on the Terre Haute line to Chicago compare with the operating conditions from Chicago to Savanna?

A. The Terre Haute line is much the better grade and also a straighter line.

Q. And from what you heard of the testimony given this morning by the witnesses Pearson and Lynch, how would you say the operating conditions on the Terre Haute line to Chicago compare with the operating conditions as described by Mr. Pearson and Mr. Lynch on the Burlington and Illinois Central?

Mr. Stadell: I object to that.

Mr. Hunter: I think it is very material, in view of what Mr. Stadell brought out.

Mr. Stadell: I think the Commission will determine the comparative operating conditions, and it is not the province of this witness to take the testimony and draw comparisons and say which of the two is the best. It is up to the Commission. The facts are put in the record for the Commission to make that determination. The question invades [fol. 1234] the province of the Commission and I object to it. We will be here for a week now if they want to have answers to some of these questions.

Exam. Trezise: Your question is being confined to the facts as shown here. The Examiner cannot follow these detailed facts as to the tractive effort and the tonnage ratings and so on, but Mr. Whalen is familiar with those things and I think that unquestionably he can tell how they compare. Now, if he is going to go beyond any testimony that is given in this case, why, of course, he can't express a view as to what the transportation conditions are on the other lines.

Mr. Stadell: I think we should first find out whether he feels that the testimony of these other gentlemen contains enough facts, all of the facts that he would have to have as an expert operating witness to draw a competent comparative opinion.

Mr. Hunter: Will you comment on that last statement, Mr. Whalen?

The Witness: Well, the Burlington witness testified that with an engine of 81,600 pounds tractive effort they were

able to handle from Herrin to Galesburg 6500 tons, and in the Fulton County with the same locomotive to Lewistown 6600 tons. Now, from Hallock to Faithorn with an engine of 73,000 tractive effort, or approximately 7/8ths the tractive effort, we handle within 100 tons of as heavy a train, which would indicate that there is some reason for that, otherwise their engines undoubtedly would have a tonnage [fol. 1235] rating in excess of 6500 tons.

By Mr. Hunter:

Q. Have you answered directly and in a few words the question Mr. Stadell which in effect was, as I understood it, whether the witness——

Mr. Stadell: I will withdraw the question.

By Mr. Hunter:

Q. (Continuing:) —whether the witnesses Pearson and Lynch gave sufficient operating facts for you to make an intelligent appraisal of the situation on their respective railroads?

A. I noted the Burlington's figures for my own satisfaction, and I would say to make a comparison with them, yes, they have, and I have gotten enough out of them to make a comparison based only on the figures they gave this morning, comparing it with our own operation.

Q. How about Mr. Lynch?

A. Yes, only I didn't note it. As he passed along I felt we were as favorable as they were, if not more so, in the operation. Then from Aurora to Rochelle on the Burlington, with an engine of 80,000 tractive effort, they handle 3300 tons, while we with an engine of 70,000 tractive effort handle 4500 tons. Then to Amboy with an engine of 80,700 tractive effort they handled 3200 tons. We don't have an engine that heavy in any of the service in that territory, but proportionately our rating and tonnage handled is heavier.

Mr. Hunter: That is all.

[fol. 1236] Exam. Trezise: Any further questions?

Recross-examination.

By Mr. Stadell:

Q. Do you know what the actual maximum tonnage is that is being handled by the Burlington over these lines or the Illinois Central?

A. Just from the testimony.

Q. You have no personal knowledge of it?

A. No, I have no knowledge except what I gained here this morning.

Q. Are you handling the maximum tonnage rating from Linton to Latta and to West Clinton?

A. We operated during the period I was there, 95 per cent of the trains were operating with the tonnages I have given you. There is always sufficient business down there to fill your trains, except possibly during a shut down on account of the mines being closed.

Exam. Trezise: Well, is the tonnage that you gave them the maximum? I think that is what he is driving at.

The Witness: That is the maximum and that is the general tonnage handled by these engines.

By Mr. Stadell:

Q. Do you consider the element of curvature important in affecting the operation of trains, straight trains?

A. There is a formula of the resistance by curvature which indicates that 10 degrees curve, I believe, gives you [fol. 1237] the equivalent of .4 of 1 per cent of grade; but on the main lines very few of the railroads have that, except in a congested area.

Q. You have no personal knowledge of the operating condition over the Burlington or the I. C. from the Southern Illinois District to the points involved in this case, have you?

A. Only from what I heard in the testimony.

Q. And all of the statements you made and opinions you gave here on the comparative operating conditions over those roads and the Milwaukee was based solely on what you heard here this morning through the testimony of the witness for the Burlington and the witness for the Illinois Central Railroad?

A. That is right, the testimony given here.

Mr. Stadell: That is all.

Exam. Trezise: Any further questions? (No response.) You may be excused, Mr. Whalen.

(Witness excused.)

Exam. Trezise: We will take a few minutes' recess.

(Recess taken.)

Exam. Trezise: All right, gentlemen, when you are ready we will continue.

Mr. Hunter: Mr. Examiner, during the recess we have considered Mr. Stadell's request for information as to the grades on the mine tracks of the Milwaukee in Indiana, that is, the grades from the mines to the main line. As Mr. [fol. 1238] Whalen explained, we do not have the tonnage ratings for the mine tracks, as we coordinate the pickup of coal with the delivery of empties to the various mines; and then too, the question of curvature is very important, just as important as the grad Information of that kind was not furnished with respect to the Illinois mines and we do not believe it would serve any purpose to go into that with respect to the Indiana mines, and we couldn't use it for comparative purposes.

Exam. Trezise: All right. Proceed, Mr. Cook.

Mr. Cook: Mr. Fischer, please.

Mr. Stadell: I would like to ask, you refuse to furnish that information then, is that right, Mr. Hunter?

Mr. Hunter: Under the circumstances I have outlined, yes. If you had it for the Illinois mines, I would have no objection to giving it to you for Indiana.

Exam. Trezise: Proceed, Mr. Cook.

C. H. Fischer was sworn and testified as follows:

Direct examination.

By Mr. Cook:

Q. State your name and address, please.

A. C. H. Fischer, Chicago.

Q. What position do you hold with the C. & E. I. railroad?

A. Superintendent of transportation.

Q. How long have you been connected with the C. & E. I.?

A. Thirty-four years.

[fol. 1239] Q. How long have you been superintendent of transportation?

A. Nine years.

Q. I show you a map, Mr. Fischer, which has been marked Exhibit No. 18 and ask you if this map was prepared under your direction?

A. It was.

(Respondent's Exhibit No. 18, Witness Fischer, marked for identification.)

By Mr. Cook:

Q. Are you familiar with the operation of the C. & E. I. from various coal districts on its line?

A. I am.

Q. I wish you would explain, please, in a general way your Exhibit No. 18.

A. So far as concerns the coal, starting over at the left-hand side, we have mines at Livingston and Nokomis, Illinois. Nokomis is a short distance from Livingston, about 35 miles north. Then we have mines in the West Frankfort region, which we call the Southern Illinois. We have mines in the Danville district. We have mines at Clinton, Indiana, and at Princeton, Indiana. There are mines in the Sullivan district, but at the present time none of them are working on our line.

Q. What are the distances shown on this exhibit?

A. Those are the distances from the principal coal loading points on our line to Chicago, from Princeton, West Frankfort, Livingston, Clinton, and Danville.

[fol. 1240] Q. Does this exhibit indicate a portion of your line that is double track and a portion that is single track?

A. Yes, the double track line is clearly indicated there and the single track likewise.

(Respondent's Exhibit No. 18, Witness Fisher, received in evidence.)

By Mr. Cook:

Q. I show you an exhibit marked No. 19 and ask you if this exhibit was prepared under your direction?

A. Yes, that was prepared under my direction.

(Respondent's Exhibit No. 19, Witness Fischer, marked for identification.)

By Mr. Cook:

Q. Does this exhibit contain certain information in regard to the operation of mines on the line of the C. & E. I.?

A. Yes, it shows the distance to Chicago, the miles of frack, divided between single and double; how we move the coal; the number of break-up points; the maximum grades encountered; the maximum curves encountered; and the engine rating.

Q. And that information is shown for all of the mines located on the C. & E. I., is that correct?

A. That is correct.

Q. Have you any further information you wish to offer in regard to the operation of the C. & E. I. in connection with these mines?

A. No, nothing particularly. I think these two exhibits [fol. 1241] illustrate in a fair way just how we handle this coal and the problems that we encounter.

(Respondent's Exhibit No. 19, Witness Fischer, received in evidence.)

Mr. Cook: That is all, Mr. Examiner.

Cross-examination.

By Mr. Bather:

Q. Mr. Fischer, on your Exhibit No. 18 you show what I assume to be the transportation conditions in Chicago. All of the coal moving to the suspended territory does not move through Chicago, does it?

A. No, not necessarily.

Q. At what other junctions do you deliver coal going to Rockford?

A. I would say Momence; there is a possibility of some through Chicago Heights. Coal going to Milwaukee would generally be delivered through Momence.

Q. Where would you deliver coal going for I. C. delivery?

A. That would come through Chicago.

Q. Is the movement of coal from the Brazil-Clinton District on your line comparable with the movement of coal from the same group on the Milwaukee?

Mr. Cook: I object to that, Mr. Examiner. This witness is not qualified to testify as to operations on the Milwaukee.

By Mr. Bather:

Q. Did you hear the testimony of the operating witnesses for the Milwaukee?

[fol. 1242] A. Yes, I heard Mr. Whalen's testimony.

Mr. Bather: I think that is pertinent, Mr. Examiner.

Exam. Trezise: Do you object to his giving his opinion on it?

Mr. Cook: Not if he knows, I do not.

The Witness: I don't know that Mr. Whalen went into detail to such an extent that I would be furnished the information to enable me to answer your question.

By Mr. Bather:

Q. Then you don't know?

A. No, I wouldn't answer that.

Mr. Bather: That is all I have.

Exam. Trezise: Any further questions?

Mr. Stadell: I have just one question.

Exam. Trezise: Mr. Stadell.

By Mr. Stadwell:

Q. Did you hear Mr. Whalen testify that the Milwaukee Railroad could handle 12,000 tons in a train down hill from Keller and Blackhawk to Terre Haute, Indiana?

A. Yes.

Q. The C. & E. I. could handle 12,000 tons of freight down hill also, couldn't it?

A. That is right.

Q. Most any railroad could?

A. That is right.

Mr. Stadell: That is all.

By Mr. Cardy:

Q. How many mines in your Brazil-Clinton District?

[fol. 1243] A. There are four mines operating in the Brazil-Clinton District area.

Q. About what is their distance from the assembly yard?

A. I would say from 5 to 10 miles.

Q. How many in the Linton-Sullivan District?

A. There are no mines working there at the present time.

Q. How many mines did you have and where were they a short time ago or a few years ago?

A. A couple of mines.

Q. How many?

A. Two.

Q. That was a very large district, wasn't it, at one time?

A. At one time we had 20 mines in that area.

Q. What is the distance of these two mines that are working now from the assembly yard which is Seifert, is that correct?

A. Siefert, I would say about 4 miles.

Q. And the traffic is assembled at those two assembly yards which you have indicated and transported northbound to Chicago?

A. That is right.

Q. Or to Momence or Chicago Heights on traffic destined to this territory?

A. That is correct.

Mr. Cardy: That is all.

By Mr. Wood:

Q. Mr. Fischer, are you familiar with the ton ratings [fol. 1244] on these engines listed in your Exhibit 19?

A. Yes.

Q. Do you have them there in any fashion so you can supply them to us?

A. Well, I have shown them in the last column.

Q. Oh, that is your ton ratings?

A. That is right.

Q. What about your tractive effort?

A. Those ratings are for the Mokado engine with a tractive effort of 60,300 pounds.

Q. All of them?

A. Yes, all based on the same size engine.

Q. What was that rating?

A. 60,300 pounds.

By Mr. Hunter:

Q. Mr. Fischer, referring to Mr. Whalen's testimony, he referred to the 12,000 ton movement, as I recall, from the Linton-Sullivan group. Now, does the C. & E. I. have

any mines that it serves or any group of mines in the Linton-Sullivan that produce 12,000 tons a day?

A. As I previously stated, we have at the present time no mines working in that area.

Q. At present you couldn't haul anything like that, therefore?

A. Well, it was a hypothetical question, as I understood it.

Q. Does the C. & E. I. operate any passenger service from its fields in Indiana, the Brazil-Clinton or the Linton-Sulli- [fol. 1245] van, to Chicago?

A. We operate a number of passenger trains through there.

Q. To Chicago?

A. Quite right.

Mr. Hunter: That is all.

By Mr. Bather:

Q. Mr. Fischer, take Marion, for example—do you deliver any coal to connecting lines at West Frankfort for Rockford or Freeport?

A. No, sir.

Exam. Trezise: Are there any further questions? (No response.) If not, you may be excused, Mr. Fischer.

Mr. Cook: I wish to offer Exhibits 18 and 19 at this time.

Exam. Trezise: They are already shown in the record.

(Witness excused.)

Mr. Wood: Mr. Examiner, now that an exhibit and testimony has been offered sohwing curves by one of the carriers, I wonder if Mr. Hunter would now reconsider his statement and accede to that request.

Mr. Hunter: These are main line curves, Mr. Wood, and Mr. Whalen testified about that. But what Mr. Stadell asked for was the curvature—he didn't ask for the curvature, but merely the grade from the mine track spur to the main line. Now, we testified and Mr. Whalen was prepared to testify concerning all of the curves and grades on the main line. This here doesn't purport to [fol. 1246] give you the curves on the mine spurs.

Mr. Stadell: My request was for the grades and the curves on the mine tracks, that is, on the tracks leading from the assembly point in Indiana to the mines; but as I understood

it, Mr. Hunter said they refused to furnish that information.

Exam. Trezise: I think that is understood now.

Mr. Hunter: That is right. But this refers merely to the main line carvature.

Exam. Trezise: All right, gentlemen, we will adjourn until 10:00 o'clock tomorrow morning.

(At 4:00 P. M. June 21, 1943, adjourned to 10:00 o'clock A. M. June 22, 1943.)

[fol. 1247] Morrison Hotel, Chicago, Illinois,
June 22, 1943.

The hearing was resumed pursuant to adjournment, at 10:00 o'clock a. m.

Before R. N. Trezise, Examiner.

Present W. C. Kaylor, Illinois Commerce Commission.

APPEARANCES:

As before.

PROCEEDINGS

Exam. Trezise: All right, gentlemen, let's continue. Are you ready, Mr. Hunter?

Mr. Hunter: Yes.

CHARLES H. LONGMAN was sworn and testified as follows:

Direct examination.

By Mr. Hunter:

Q. Will you state your name, occupation and business address, please.

A. Charles H. Longman, assistant chief operating officer, Chicago & North Western Railroad, 400 West Madison Street, Chicago, Illinois.

Q. What are the duties of your position, Mr. Longman?

A. Supervision of the entire North Western Railroad, in various departments.

[fol. 1248] Q. That is with respect to operating matters?

A. That is right.

Q. And will you state briefly, Mr. Longman, your railroad experience.

A. I have had 35 years in the operating department, starting as a fireman, engineer, road foreman of engines, trainmaster, assistant superintendent, assistant to the general manager, assistant to the vice president, assistant general manager and assistant chief operating officer.

Q. Does the North Western Railway serve any of the origin groups involved in this proceeding, any of the coal mines?

A. They do not.

Mr. Cardy: Mr. Hunter, we just can't hear over here at all.

By Mr. Hunter:

Q. Does the North Western serve any of the points of destination involved in this proceeding?

A. Yes, sir.

Q. Will you name some of them?

A. Well, Belvidere, Rockford, Freeport, Dixon, Clinton, Janesville, Fort Atkinson.

Q. Mr. Longman, the North Western, in handling coal from Illinois, Indiana and West Kentucky mines involved in this proceeding to these points of destination that you have named would receive coal where?

A. Well, at various points, the preponderance of which, [fol. 1249] however, is received at our Proviso yard just outside of Chicago; and we receive coal at Benld, South Pekin, Peoria, Barrington, Illinois, some at DeKalb—or not DeKalb—West Chicago, Sterling.

Q. Will you describe certain typical movements of coal, how it would be handled by the North Western from these points, from Benld to Rockford, for example.

A. Well, starting at Benld, we receive coal from various lines down there: the L. & M., the Illinois Traction, the Big Four, the Wabash. Those cars are put in trains of mixed traffic out of Benld and hauled to Nelson, which is approximately 192 miles, and where they connect with our main line between Chicago and Omaha; and thence to West Chicago, where they are set out and handled by our time freight that operates between Proviso and Freeport. Occasionally that traffic will move on way freights; that is, coal for Rockford.

Q. All the way to Rockford?

A. To Rockford, that is right.

Q. That is tracing a shipment from Benld to Rockford, is it not?

A. That is right.

Q. Now, would you trace that same shipment from that point if it were destined to Beloit, for example?

A. Well, it would go up to Nelson, thence into Proviso yard, switched into our time freight 591 and hauled on our [fol. 1250] Wisconsin Division to Caledonia, and from Caledonia to Beloit over the Madison Division.

Q. Can you point out the differences in transportation conditions that would be encountered in handling those two shipments, one to Rockford and one to Beloit?

A. Just what do you mean?

Q. Are they handled over the same routes or different routes?

A. Different routes.

Q. Different routes?

A. That is the same route as far as West Chicago, where you would set out your Rockford or Freeport cars. The Beloit car would come on into Proviso and be placed in a time freight for Beloit and operate over the Wisconsin Diyision, which operates northwest of Proviso.

Q. Now, you have told us you received shipments at Pekin.

A. That is right.

Q. Will you describe the handling of a shipment from Pekin to another point in Northern Illinois?

A. Well, that would be the same, outside of the fact that we would haul it 98 miles less than we would if we received it at Benld.

Q. Would you describe the handling of a shipment of that kind to Dixon or DeKalb. You described one handling to Rockford. We would like to know how you handle a shipment to either Dixon or DeKalb, coming from Peoria?

[fol. 1251] A. Coal coming from Peoria we receive at our Adams Street yard. It comes from the M. & St. L., the Alton, the T. P. W. and the Illinois Central. That is hauled up to Nelson and for Dixon it is set out at Nelson and handled by a switch run to Dixon. To DeKalb, it is taken through over the main line of the Galena Division and set out at DeKalb.

Q. Now, Mr. Longman, will you describe the handling by the North Western of a coal shipment received at Chicago destined to a point in Northern Illinois and then compare

the handling of a shipment of coal received by the North Western at Chicago, handled to a point in Southern Wisconsin, say, like Beloit.

A. Well, we receive coal at Proviso from the I. H. B. and the Chicago Belt, B. & O. C. T. We pick up some from the Illinois Northern, an occasional car; also direct from the Pennsylvania. These cars are switched into mixed trains at Proviso, whether they are going to Freeport or Beloit. For Freeport, they are switched into Train 739, which operates over our Chicago to Omaha main line to West Chicago, where it branches off on to the Freeport line, goes to Freeport or Rockford; and in the case of Beloit, it is switched into Train 591 at Proviso.

Q. At Proviso?

A. And goes out on the Wisconsin Division over to Desplaines, and from Desplaines west to Harvard, Harvard to Caledonia, and the Madison Division from Caledonia to Beloit.

Q. Would that last operation also include shipments to [fol. 1252] Lake Mills, Fort Atkinson and Madison?

A. Cars for Lake Mills and Fort Atkinson would go on to Janesville and be handled by a way freight crew on the Lake Shore Division to Lake Mills and—no, wait a minute, I am twisted. They go into Madison and over the Madison Division from Madison to Lake Mills and to Fort Atkinson out of Janesville over the Lake Shore Division. Now, Madison, of course, goes direct from Proviso on Train 591.

Q. Now, will you describe the handling of a car by the North Western received at Chicago, destined to Dixon or DeKalb?

A. A car received at Chicago or Proviso is taken on our, what we call a DeKalb extra, and is hauled, oh, let's say about 46 miles to DeKalb. A car for Dixon would go on one of our dead freights or time freights direct over the Galena Division to Dixon, but sometimes it is taken into Nelson and brought back by the switch run.

Q. You understand that in this proceeding we have referred to various representative suspended points and various representative comparative points. You have a list of those, have you not, Mr. Longman?

A. Yes.

Q. Now, will you describe the operating conditions, including the tonnage ratings or locomotives used in handling shipments by the North Western to certain of the rep-

resentative suspended points, taking a specific one, for [fol. 1253] example, from Peoria to Rockford, and compared with the operating conditions, including tonnage ratings, and so forth, in handling a shipment also from Peoria to Beloit, for example.

A. Well, on the Southern Illinois Division, we have two classes of power, classes J and J-4. The J engine has a tractive effort of 60,100 pounds and will haul 5,000 ton from Benld to South Pekin and 3600 ton from South Pekin to Nelson with a J-4 helper up the ruling grade, which we call Radner. That is about 10 miles long and the maximum grade in there is about 1.52 per cent.

A J-4 engine will handle—well, they have a tractive effort, with the booster, of 84,000 some pounds. They will handle 7300 between Benld and South Pekin.

Q. Are those actual ratings?

A. Yes, sir, actual ratings. They will haul 5,000 ton between South Pekin and Nelson, with a J-4 helper, up Radner Hill. We do at times fill out in storage, that is north of Radner, to as high as 7500 ton. That is after we cut off the helper.

Then on the Galena Division——

Q. The Galena Division is the main line?

A. The Galena Division is the main line and for the shipments you talk about, you use the main line from Nelson to West Chicago on a Rockford shipment and Nelson to Proviso on a Beloit shipment.

Now, from Nelson to DeKalb we can handle 4800 ton with a [fol. 1254] Class H locomotive—I made a mistake before. That J-4 that I spoke of hasn't 84,000 pound tractive effort; it has 79,200. The H engine has 84,200 pounds tractive effort, including the booster, and they will handle 4800 ton from Nelson to DeKalb and 5600 from DeKalb to West Chicago or Proviso.

A J-4 will handle 4500 ton from Nelson to DeKalb and 5200 ton from DeKalb to West Chicago or Proviso. A Class J locomotive will handle 3400 ton from DeKalb to Nelson and 4,000 ton from DeKalb to West Chicago or Proviso.

Cars for Rockford, as I said before, are set out at West Chicago and from that point are handled by what is known as a Class R-1 engine, which has a tractive effort of 30,900 pounds and they handle 2,000 ton from West Chicago to Freeport, Rockford being an intermediate station.

Now, the cars that are going to Proviso for Beloit are handled on the Wisconsin Division as I stated before. On that division we use Class J-A engines with 62,000 pound tractive effort and also Class J engines that have 60,100 pound tractive effort; and they handle 2900 ton to Beloit or Janesville.

Q. Now, Mr. Longman, if you handled the shipments from Chicago, that is received shipments at Chicago destined to Rockford on the one hand and Beloit on the other, would the handling as you have related it be the same? In other words from Proviso or West Chicago. You have described the movements in your previous answer from Peoria, as I [fol. 1255] understand it, to Rockford and Beloit. Now, I would like to have that same explanation made with respect to shipments that you received at Chicago. How would your answers differ?

A. Well, to Beloit, it would move directly out of Proviso to Beloit with a Class J-A or J engine to Beloit over the Wisconsin Division. As I stated before, the tonnage rating would be 2900 ton. So far as the movement from Proviso to Beloit, it's the same, identical. As to Rockford or Freeport, there would be a difference of 30 miles from Proviso to West Chicago and then it would move on the same train right into Rockford or Freeport, with a Class R-1 engine with a rating of 30,900 pounds tractive effort.

Q. Have you any further thing to add with respect to the movements of coal by the North Western that you think might be helpful to the Commission in this proceeding?

A. No, I don't think so.

Mr. Hunter: We tender Mr. Longman for cross-examination.

Mr. Zoll: I would like to ask just one question, Mr. Hunter.

By Mr. Zoll:

Q. Mr. Lynch, the superintendent of transportation of the Illinois Central, testified that we interchanged, the Illinois Central interchanged coal with the North Western at South Pekin. Is there any interchange at South Pekin?

A. Yes, sir.

Q. Is that correct?

[fol. 1256] A. Yes, sir.

Q. And how about Peoria?

A. Yes, sir.

Q. At both places?

A. Yes, sir. I failed to say that the I. C. also gave us coal at Peoria.

Mr. Zoll: Thanks. I just wanted to find out about that.

Mr. Cardy: Just one or two questions.

Cross-examination.

By Mr. Cardy:

Q. Mr. Longman, what is the mileage of the North Western in Illinois?

A. You have asked quite a question.

Q. Well, approximately. In other words, practically——

A. I wouldn't venture a guess.

Q. Outside of this——

A. Well, we have got 138 miles from Chicago to Clinton.

Mr. Hunter: What was the question?

Mr. Cardy: About what is the approximate miles of the North Western in the state of Illinois.

Mr. Hunter: Oh, I see.

By Mr. Cardy:

Q. In other words, Mr. Longman, maybe I can—practically all of your mileage except this line that runs down south to Benld is in Northern Illinois, is it not?

A. Yes, sir.

Q. Now, as a general proposition, is there any substan- [fol. 1257] tial difference in the movement of traffic on any portion of the line that might add to what you might say is confronted with adverse operating conditions? Is there any real difficulty on any portion of your line in the northern part of Illinois where you have adverse operating conditions?

A. No.

Q. In other words, if they are all substantially the same, that will answer my question.

A. Well, there is only one thing that has bothered me as an operating officer for a long time, is the low rating of the locomotive that we could use on the Freeport line.

Q. That is right. Take the line, we will say, from—where do you get your coal that originates in the Fulton-Peoria District, destined to Dixon?

A. Where do we get it?

Q. Your coal. That is, where is your transfer point on coal originating on the C. B. & Q. destined to Dixon? Is it at Buda?

A. We get it at Peoria.

Q. At Peoria?

A. That is right.

Q. You have given the transportation, the engine rating and the tonnage rating from Peoria to Dixon, have you not?

A. I gave it to Nelson and I also gave it from Proviso to Dixon, which is about the same, yes.

[fol. 1258] Q. Would you say the operating conditions on that portion of the track are substantially the same as the operating conditions on other portions of the track in Northern Illinois except possibly the Freeport branch?

A. I would say yes.

Q. Now, where do you get coal originating, we will say, at Wilmington, delivered by the C. & A. or the Santa Fe for points we will say Rockford, to Rockford?

A. I couldn't tell you.

Q. But wherever you do receive that coal, the transportation conditions from that junction point to Rockford would be substantially the same as in other directions?

A. I would say so.

Mr. Cardy: Thank you.

Exam. Trezise: Further questions?

Mr. Vesey: Yes, I have one or two.

Exam. Trezise: Mr. Vesey.

By Mr. Vesey:

Q. With respect to coal going to Beloit, as I understand your testimony, that coal is taken to Chicago, thence over your Wisconsin Division to Beloit?

A. To Proviso, which is about 13 miles west of Chicago.

Q. How do you spell that?

A. P-r-o-v-i-s-o.

Q. Now, that would be the junction point that you would take your Indiana coals that are transferred to you going [fol. 1259] into that section too, would it not?

A. That is right.

Q. Then so far as comparing Indiana and Illinois coals are concerned, they both move over exactly the same tracks going out of Proviso over your Wisconsin Division into

Beloit, Janesville, Madison, that section of the country?

A. That is right, from Proviso.

Q. Then with respect to coals going through Elgin, Belvidere, Rockford, Freeport, those coals would move over the same tracks regardless of whether they were Indiana or Illinois coals, right?

A. No, we don't get Indiana coal on our Southern Illinois Division. We get that at Proviso.

Q. You get it at Proviso?

A. That is right.

Q. Then that coal going——

A. The Illinois coal moves over the Southern Illinois Division and the Galena Division to Proviso, if it is going to Beloit; and the Indiana and the Kentucky coal that we receive at Proviso starts out of there on the Wisconsin Division.

Q. Now, does that coal, Indiana coal, let us say, going to Rockford, does that go out of Proviso to West Chicago, thence through Elgin, Belvidere to Rockford?

A. That is right, sir.

Q. Isn't that the same way that you can handle your [fol. 1260] Southern Illinois coal that comes up through Peoria?

A. Yes, that is true, but I thought you meant that we handled the Indiana and Kentucky coal also over the Southern Illinois and the Galena Division.

Q. No.

A. You are correct, yes, sir.

By Mr. Flansburg:

Q Well, Mr. Longman, do you take the Southern Illinois coal for Rockford and Freeport any further than West Chicago, or do you take it clear into Proviso?

A. We take it into West Chicago.

Q. That was his question. That is the only difference, as I understand it?

A. That is right.

Mr. Cardy: Just one other question.

Mr. Vesey: I am not through yet.

Mr. Cardy: Pardon me.

By Mr. Vesey:

Q. Just following along on that same thought, the coal that you would take originating in the Fulton County field, I take it that you would——

A. We don't originate any coal.

Q. No, I say coal originating in the Fulton County field and moving over the C. & N. W. tracks, where would you take that coal on, at Peoria?

A. I don't even know where Fulton County is.

Q. You mean the movement is so small that it is just [fol. 1261] insignificant to your railroad, is that it?

A. That coal we receive at Peoria.

Q. At Peoria?

A. That is right.

Q. Thence from Peoria on into all the territory where you would move coal either originating, destinations in the vicinity of Peoria or south of Peoria, it moves over the same tracks, as far as your road is concerned?

A. That is right.

Q. Now, do you have any arrangement for handling coal out of the Fulton-Peoria field originating on the M. & St. L. which then connects with the C. & N. W.?

A. Yes, sir.

Q. What is that arrangement?

A. We have trackage rights over the M. & St. L. and operate a crew out of South Pekin to Middle Grove. They pick up at Middle Grove, Farmington and Hanna. We get about 20 cars of commercial coal a day right now out of there.

Q. And that is what, a single line haul, then, as far as you are concerned?

A. That is right.

Q. Coming into Peoria?

A. That is right.

Q. Do those trackage rights that you have over the M. & St. L. carry as far as Monmouth or do they go just out past Farmington?

[fol. 1262] A. They go to Middle Grove, as I understand it.

Q. They go to Middle Grove?

A. Yes, sir.

Q. Handling Middle Grove Electric Company's coal at Middle Grove?

A. Yes, sir.

Mr. Vesey: I think that is all.

Mr. Cardy: Just one question.

Exam. Trezise: Mr. Cardy.

By Mr. Cardy:

Q. Mr. Longman, on coal originating at Victoria, which is handled by the C. B. & Q. through Galesburg, would you not receive that coal at Sterling?

A. I don't know where we receive that coal, but I know we do receive coal from the C. B. & Q. at Sterling.

Q. At Sterling?

A. Yes.

Q. In other words, that is a regular interchange point of the C. B. & Q. and the North Western?

A. That is right.

Q. And between Sterling and Dixon, there aren't any difficult operating conditions?

A. Between Sterling and Dixon?

Q. Between Sterling and Dixon.

A. No, sir.

Q. And I understand you have no interchange at Buda [fol. 1263] with the C. B. & Q., is that correct?

A. We may get an occasional car but——

Q. Have you interchange arrangements? Is it possible to interchange there, if you know?

A. Well, I will have to say I don't know right now.

Mr. Cardy: All right, that is all.

Exam. Trezise: Any further questions?

Mr. Stadell: I have a couple.

Exam. Trezise: Mr. Stadell.

By Mr. Stadell:

Q. You referred, in answer to question by Mr. Vesey, I think, to your Southern Division. What do you mean by that?

A. That is the division between Benld and Nelson. It is 98 miles from Benld to South Pekin and 92 miles from South Pekin to Nelson.

Q. That is really in the northern portion of Illinois?

A. No, we call it the southern. Oh, well, maybe it is. Let's see. Well, I would say yes.

Q. Northern portion of Illinois?

A. That is right.

Q. Does the North Western have a direct connection at Peoria or Pekin with the T. P. W.?

A. Yes. No, no.

Q. Any coal that you would receive there from Fulton County mines would be through a switching line or belt line?

[fol. 1264] A. The P. & P. U. delivers it to us.

Q. Have you a direct connection at either of those points with the Burlington Railroad or do you receive your coal through the same switching line?

A. Well, they have a main line that is right adjacent to our Adams Street yard, but I couldn't tell you right now whether they deliver it themselves or through the P. & P. U.

Q. How about the M. & St. L., do you have a direct connection with them or do you receive through the P. & P. U. the coal through Peoria and Pekin?

A. I will have to say the same to that.

Q. You don't know?

A. That is right.

Q. Now, you referred to the fact that you had to use helper service out of Radner, Illinois?

A. Yes, sir.

Q. Could you tell me the approximate location of that hill?

A. Well, it is just outside of Peoria.

Q. Peoria; I see.

A. Out of our Adams Street yard; and I think it is about 10 or 11 miles in length.

Q. And in referring to a helper, you were referring to the use of an extra engine?

A. Yes, sir.

Q. Two engines?

[fol. 1265] A. Yes, sir.

Q. And for what distance would you have to use the helper?

A. Well, you would have to use them about—let me look at that—10 miles. In some cases we take them right out of South Pekin, but the grade is 10 miles long and we cut them off at Radner.

Mr. Vesey: That is all, thank you.

By Mr. Bather:

Q. In the handling of coal from Southern Illinois going through West Chicago to Belvidere, Rockford and Freeport and through Proviso to Beloit and Janesville, your line would be a circuitous line as compared with the Milwaukee road, would it not?

A. I don't know how the Milwaukee handles it.

Q. In the handling of coal from Indiana through Proviso to the destinations I mentioned, do you know whether or not your line would be substantially longer than the route via the Milwaukee?

A. I would say that judging from knowledge of my own line, why, we go quite direct.

Mr. Bather: That is all.

Exam. Trezise: If there are no more questions—

Mr. Vesey: I have one or two questions more.

Exam. Trezise: Mr. Vesey.

By Mr. Vesey:

Q. I forgot to ask you when I was cross-examining you, Mr. Longman, with respect to your coal coming up over your Southern Illinois Division, and particularly going [fol. 1266] from Peoria through to Nelson. Now, as I understand it, coal going to Dixon and Rochelle moves from Peoria to Nelson, thence to Dixon?

A. That is right.

Q. Thence to Rochelle. You gave us the mileage from South Pekin to Nelson. What is the mileage from Nelson to Dixon?

A. Well, just a minute. You see, I have got 8,000 miles of railroad. I can't keep all those things in my head. Nelson to Dixon is 6.4 miles.

Q. Now, coal originating either in Southern Illinois or Fulton-Peoria field that comes up through Peoria and Nelson—coming through Peoria, does that coal, if it goes to Clinton, does it go to Nelson, thence to Clinton?

A. Yes, sir.

Q. What is the distance from Nelson to Clinton?

A. Let's see, 34 miles.

Q. 34 miles?

A. Yes, sir.

Q. Now, just to understand your method of approximating here or phrasing, whichever way you want to term it,

operating conditions on a railroad from your own railroad, would you just tell me in layman's language, what is the difference, if any, in the operating conditions over your road between Nelson and Clinton on the one hand and Nelson and Dixon on the other hand with respect to coals going over the Peoria-Nelson Division?

[fol. 1267] A. None whatever.

Q. None whatever?

A. That is right.

Q. In other words, the only difference is the difference in miles, is that right?

A. That is right.

Q. Do you cross any bridges going from Nelson to Dixon, I mean any substantial rivers or the like?

A. Well, we have a river just west of Nelson.

Q. Just west of Nelson?

A. We cross two going into Clinton but, as I recall, we don't cross any going into Dixon.

By Mr. Hunter:

Q. Just to make the record clear, you are referring to Clinton, Iowa, there, are you not?

A. Yes, sir.

Mr. Hunter: All right.

By Mr. Vesey:

Q. One of those rivers is the Mississippi, I take it?

A. That is right.

Q. What is the other?

A. The other is the Rock.

Q. The Rock River. Does the C. & N. W. own the bridges over which its trains travel, let us say from Nelson to Clinton?

A. What is that?

Q. I say does the C. & N. W. own the bridges over which [fol. 1268] its trains travel on its line going from Nelson to Clinton, Iowa?

A. Yes, sir.

Q. Do you know what the costs of those bridges are?

A. No, I do not.

Q. As an operating man, do you get the figures compiled by your road with respect to the maintenance cost, either on a per mile basis or on a division basis?

A. Well, they are compiled, as I understand it, but I don't bother with them.

Q. You say they are what?

A. They are compiled, as I understand it, but I don't——

Q. In other words, they would be available?

A. I think so. I wouldn't make a statement and be sure about it.

Q. Would you have any objection to giving us the figures for the past ten years, maintenance costs on your railroad, just for comparison purposes, so that we may have a bridge on the one hand and a stretch without a bridge on the other, Nelson to Clinton versus Nelson to Dixon?

Mr. Hunter: We object to that; it is immaterial.

Exam. Trezise: What did you say?

Mr. Hunter: We object to that. It is outside the scope of this witness' testimony. He doesn't know anything as to maintenance costs, the figures. He so testified.

Mr. Vesey: Well, if the Examiner please, I think it might [fol. 1269] be very helpful to both commissions in this instance, where we have, fortunately, a strip of track where there are no bridges and the like involved, and we have a strip of track where we have two bridges. I think it would be most interesting and enlightening for us to see what was the maintenance cost over two comparable stretches, over the same railroad track, where coal comes up to a junction point, moves one direction without any bridges, moves the other direction with the bridges, just so we get that.

Exam. Trezise: Do you wish to furnish that, Mr. Hunter?

Mr. Hunter: No, sir, and I would like to state why. Mr. Longman is an operating man. We didn't bring in a maintenance man of the North Western. That is outside the scope of his testimony and we don't believe it is really material.

Exam. Trezise: Very well. Continue.

Mr. Vesey: In other words, I take it the answer was they declined to furnish that?

Mr. Hunter: Yes.

Exam. Trezise: Yes, I think that is right.

Mr. Hunter: That is correct.

By Mr. Vesey:

Q. Now, I believe in giving your history here, experience, Mr. Longman, you had rather a varied experience.

A. That is right.

Q. Are my notes correct in the fact that in addition to operating in the operating departments, so to speak, of the [fol. 1270] road, you were also in what you might term the maintenance division of the road as well?

A. No.

Q. You were not?

A. I was not. I was a locomotive engineer.

Q. Yes.

A. That is not in the maintenance division.

Q. Well, for example, would you give me the ruling grade on your Nelson to Clinton Division and the ruling grade on your Nelson to Dixon run?

A. You mean in per cent?

Q. Any way that you have it.

A. Well, I can say this to you, that the ruling grade is between Geneva and Elburn westbound and between Rochelle and Creston eastbound. I can get that percentage from my briefcase, if you wish it.

Q. Yes, if you will, please. Just to save repeating figures that I am not interested in anyhow, what I want is the ruling grade on your Nelson to Dixon traffic eastbound; on your Nelson to Clinton traffic westbound, in miles.

A. Nelson to Dixon eastbound?

Q. That is right. Nelson to Clinton westbound.

A. The ruling grade to Dixon is .782 per cent.

Q. That is .782 of one per cent?

A. That is right.

[fol. 1271] Q. Yes.

A. Now, you say to Clinton?

Q. That is right, Nelson to Clinton, westbound.

A. Well, 0.723.

Q. In other words, as far as ruling grades are concerned, Nelson to Dixon eastbound versus Nelson to Clinton, Iowa, westbound, would it be a true statement to say that there was no difference of note?

A. No, there isn't much difference.

Q. Would it be true to say that with respect to that same comparison again, Nelson to Dixon eastbound, Nelson to Clinton, Iowa, westbound, so far as operating conditions

are concerned, there is no substantial difference between the two movements?

A. No.

Q. The only difference of any consequence is the difference in miles?

A. That is right, sir.

Mr. Vesey: That is all.

Mr. Hunter: That is all, thank you.

Mr. Stadell: I just want to ask this:

By Mr. Stadell:

Q. Maybe I misunderstood you in connection with the figures you gave for this grade. That wasn't 7 per cent, was it?

A. Oh, no.

Q. It was .7?

[fols. 1272-1307] A. That is right.

Q. In both cases?

A. That is right.

By Mr. Vesey:

Q. In other words, as I understood you, it was .782 of one per cent in the case of Nelson to Dixon, .723 of one per cent Nelson westbound to Clinton?

Mr. Stadell: That is the correct figure.

Exam. Trezise: If there are no further questions, you may be excused, Mr. Longman.

(Witness excused.)

[fol. 1308] PETITIONERS' EXHIBIT No. 6

* * * * * * *

PROCEEDINGS

Exam. Trezise: All right, gentlemen, when you are ready we will begin. I believe it was the understanding that the Southern Railway witness was to be cross examined.

Mr. Dixon: Yes, that was the previous understanding. I would like to call Mr. Dilli back to the stand.

CARL W. DILLI resumed:

Direct examination (Continued).

By Mr. Dixon:

Q. Mr. Dilli, before cross examination begins, is there anything further you wish to say on direct?

A. I think perhaps if I restate our position——

Exam. Trezise: You should show that this is the same Mr. Dilli that appeared before, will you?

By Mr. Dixon:

Q. Are you the same Mr. Dilli that appeared at the previous hearing?

A. That is correct.

Exam. Trezise: On behalf of the Southern Railway?

Mr. Dixon: On behalf of the Southern Railway.

The Witness: That is correct.

By Mr. Dixon:

Q. Go ahead with whatever you wish to say.

A. I was about to say that three months have elapsed since I testified. It may progress matters a little if I restate our position in this case.

First, our main concern is in respect to differentials. [fol. 1309] However, we feel that the rates in the affected territory might well be increased. Second, our position is that there should be one rate for mines on all lines in the Brazil-Clinton group and from mines on all lines in the Linton-Sullivan group to individual destinations in the affected territory. Third, further, our position is that differentials between the Princeton and the Boonville groups, on the one hand, and the Linton-Sullivan Group, on the other, should be 7 and 10 cents per ton, respectively.

Exam. Trezise: And that means that you advocate the continuance of that 3 cents differential of the Boonville over the Princeton-Ayrshire Group?

The Witness: That is correct, yes.

Mr. Dixon: Is that all you have on direct?
The Witness: Yes.
Mr. Dixon: Cross examine.

Cross-examination.

By Mr. Cardy:

Q. Mr. Dilli, do you believe that the differentials that you suggested there would be reasonable based upon your knowledge of the transportation of coals in this territory?
A. Yes, that is our position.

Q. Now, Mr. Dilli, the Southern Railway extends from Louisville to East St. Louis, and you have some mines in the Princeton District. What are those mines, or where are they located?
[fol. 1310] A. They are included in the exhibit filed by Mr. Robertson.

Q. How many mines are there, one or two?
A. There are several, Ayrshire and Princeton—I think there are only two that are actively producing today.

Q. From that line that extends from Louisville to St. Louis, you have a branch line extending south from Huntington, do you not?
A. That is correct.

Q. That serves some mines?
A. Yes.

Q. And the mines on that branch are known as in the Boonville District, is that right?
A. Winslow District?

Q. Boonville District.
A. Boonville District, yes.

Q. How far are those mines apart, that is, the Princeton mines versus the Boonville mines, just the short line distance, or cross-country distance, you might say?
A. About 40 miles.

Mr. Biaett: What is that, the cross-country distance, or what?

The Witness: That is the rail distance, Boonville versus Princeton, on the average.

Mr. Biaett: What railroad?

The Witness: Southern Railway.

[fol. 1311] By Mr. Cardy:

Q. Now, what is your cross-country distance about?

A. I can't tell you. I haven't figured it.

Q. In other words, some of those mines in the Princeton District and Boonville District are pretty close together, are they not?

A. Well, the Boonville District is directly south of Princeton.

Q. Yes.

A. I was in that area at one time. It isn't a very great distance. It wouldn't be as much as the rail distance.

Q. You don't know that distance, and you don't know whether some of the mines in the Princeton District that are mining coal are located actually in the Boonville District, or vice versa?

A. No, I don't.

Q. Now, practically the only traffic on this branch is coal, as I get it from your statements, and coal traffic is very important traffic so far as the maintenance of that branch is concerned?

A. That is correct, yes, sir.

Q. I notice in your statement that you say the going into effect of the proposed rates or the changing of the differentials will result in the freezing of these mines, these groups, to the territory here involved. What do you mean by the term "freezing"?

A. Well, I stated that it was our opinion that it would [fol. 1312] result in freezing out these mine groups. I used the words "freezing out" in the sense it would stifle the movement, discontinue the movement from these mines if these differentials should be increased.

Q. In other words, if the differentials are increased, Princeton and Boonville over the other districts, it is your opinion that it will actually stifle or freeze the movement from the Princeton and Boonville mines, is that it?

A. Yes, that is our position.

Q. Now, I understand that prior to the present adjustment there was a substantially higher differential adjustment between the Princeton, Boonville and the Sullivan Districts. Was there any movement under a higher differential than the present differential?

Mr. Stadell: To where?

Mr. Cardy: To the affected territory involved.

Mr. Stadell: Give us the movement too while you are answering it.

Mr. Cardy: Just a moment, I am asking the question.

Mr. Stadell: Aren't you cross examining?

Mr. Cardy: Yes, but just wait untill I get through.

The Witness: Have you finished your question, Mr. Cardy?

Mr. Cardy: Yes, I have. In other words, on your page 5 of your statement, you say, prior to that time there was little, if any, movement from Boonville.

[fol. 1313] The Witness: I have in mind there prior to the time that we reduced the differential Boonville over Princeton, that is to say, made the differential 3 cents. Up until that time, I can't give you the tonnage figures, but we do know from experience there was very little movement from the Boonville District.

By Mr. Cardy:

Q. Based upon actual experience, there wasn't any movement from the Boonville District until you put in the present differential adjustment?

A. I couldn't go so far as to say there wasn't any movement, but I will go so far as to say the movement was of little consequence.

Q. Now, Mr. Dilli, do you know of any coal rate adjustment in Illinois where they make a distinction between local and joint line rates to this territory in Northern Illinois?

A. Well, you have it today from the Boonville, Princeton, Brazil-Clinton Groups. Other than that, I know of no other situation.

Q. In other words, the Brazil-Clinton, Princeton and Boonville have rates on the Milwaukee and the Illinois Central have rail rates which are lower than the joint line rates?

A. Yes.

Q. Do you know of any situation in Illinois, Western Kentucky or in Indiana where that condition obtains?

A. I haven't run into that situation in other places than that.

[fol. 1314] Q. Now, is there any substantial difference between the groupings in Illinois, and the establisment of

joint rates from various mines, to the territory involved, as compared to the adjustment of rates from the Indiana groups, particularly the Princeton and Boonville Groups?

A. Why, the Southern Illinois Group is substantially larger than either the Princeton or Boonville groups.

Q. And from the Southern Illinois Group are the rates the same to Northern Illinois from mines in that group, regardless of whether the movement is single or joint line?

A. That is my understanding of it, yes, sir.

Q. Is there any situation in Southern Illinois which might be comparable with the situation in Princeton and Boonville, where the Southern Illinois roads have extended the Southern Illinois rate to include mines similarly situated to Princeton, so far as the Boonville rates are concerned? Are you familiar with that?

A. I don't understand your question.

Q. You are not familiar with the rates on the Big Four in Saline County, where there is a separate line there and they have extended the Southern Illinois Group so that they have all one group, where in Indiana you have two groups where the mines are substantially the same distance apart. If you are not familiar with that, we will pass it.

A. I don't understand the question.

[fol. 1315] Q. I will withdraw it. Now, you feel that the rates you have there today are just and reasonable rates so far as the movement of traffic is concerned? In other words, the level of rates that you have from Princeton or the Boonville District to this territory, particularly at Beloit, are the highest rates under the present adjustment that you can move coal under?

Mr. Stadell: I object to that, Mr. Examiner. This witness doesn't represent the mines. He hasn't been qualified to express any opinions with respect to whether this coal would move on one rate or another rate.

Exam. Trezise: Well, ask him what he knows about that situation before you ask him the final question. Does he know?

By Mr. Cardy:

Q. Well, do you know, Mr. Dilli, whether or not if you increase the rate from Boonville it would or would not move any coal, particularly if the rates——

A. I don't know that that would be the fact. I can only express my opinion on that. I am satisfied that the differential as between the mines must remain the same if the mines are to compete with the other group of mines located north thereof. That is our position.

Q. In other words, you have no objection to increasing the general level of rates based upon present differentials?

A. No, so long as the differentials are maintained as of today, we would have no objection to increasing the freight rates.

Q. But if the present proposed adjustment goes into [fol. 1316] effect, it would be absolutely necessary for you to maintain your present rate from Boonville in order to compete?

A. Yes, I think that is correct.

Mr. Cardy: That is all.

Exam. Trezise: Well, as to that, you do not propose an increase in the rate to Beloit from the Princeton-Ayrshire Group?

Mr. Cardy: That is right.

Exam. Trezise: The present rate is $2.27 and you propose to continue that. The other carriers from that general group propose a rate of $2.39 in this I & S proceeding 5139 before us now. Do you mean to say that should the Commission find that the $2.39 rate is a reasonable rate that you would voluntarily come forward and increase your rate to the basis that the Commission would here determine to be a maximum reasonable rate or a reasonable rate?

The Witness: Well, if the Commission issued an order requiring us to establish the $2.39 rate, I assume we would have to publish it.

Exam. Trezise: That was not quite my question. You have no issue here before the Commission concerning the rate from the Princeton-Ayrshire Group to Beloit under the I & S proceeding?

The Witness: That is true.

Exam. Trezise: Because the present rate is $2.27, and you [fol. 1317] don't propose to change it. So there is no issue in that respect. Now, I don't want to get into a legal discussion, but how would you correct the situation—only by an order of the Commission?

The Witness: Yes, I think so.

Exam. Trezise: Well then, you wouldn't correct it, is that the point?

The Witness: Let it remain static as it is now. It doesn't need any correction.

Exam. Trezise: Then your statement that you would be willing to go along with the rates that may be found reasonable here and increase the rate to Beloit, for example, to the basis of the other carriers, would be meaningless, wouldn't it?

The Witness: Yes, that is correct.

Exam. Trezise: Then where do we stand? I am just in the dark here.

Mr. Cardy: There are some mines that are in the Princeton District that are not on his line, which are attempting to increase the rates.

The Witness: We are not attempting to increase the rates.

Mr. Cardy: No; and his statement is in justification of the present adjustment without increasing the rates. Now, there are some mines in the Princeton District that are attempting to increase the rate, and we object to that too. We object to where they are attempting to increase the [fol. 1318] rate and disturb the differentials.

The Witness: We have no objection to increasing the rates as a whole. I thought that is what Mr. Cardy was asking me, a general increase in the rates all over, we would have no objection to that, obviously.

Mr. Dixon: Mr. Examiner, I don't think we are under any delusions about it. If the Commission approves $2.39 from Princeton, we will have to publish it.

Exam. Trezise: You mean you think you will voluntarily publish it?

Mr. Dixon: I think the other lines will see to that.

Exam. Trezise: Well, can you speak for your railroad, then, as the attorney, and say you will publish it?

Mr. Dixon: If the destination lines say to publish it, we will have to publish it. Otherwise they could withdraw their concurrence.

Exam. Trezise: Well, of course, that is the fly in the ointment with respect to these rates. If we are going to have a uniformity of rates from these general mines in Indiana, it seems now would be almost the time to begin, since this issue has been bandied about here for a good

many years, and if we can arrive at some sort of conclusion in this procedure, then I think a great many of the difficulties of the future might be avoided. But if we can't arrive at a conclusion, we must continue, I suppose, as we have been in the past.

[fol. 1319] Mr. Vesey: I assume, if the Examiner please, that that was the feeling of the Commission when they denied the motion to consolidate, that is, we should continue in the future as we have in the past without conclusion.

Exam. Trezise: I have no comment on that, Mr. Vesey.

Mr. Cardy: Mr. Examiner, it is our position that the action of the Southern Illinois in maintaining the differentials by failing to increase the rates is proper. Now, there is some misunderstanding of my position. I think that is proper and just, that they maintain the differentials. Now, if the carriers north have maintained the differential, have increased the rates horizontally, I don't believe there would be any objection. But when you take a horizontal increase and disturb differentials, which other carriers have done, except the Southern, we object to it. Now, what I want to show by Mr. Dilli and bring out forcibly was that the adjustment from Boonville which they have figured out is the proper adjustment regardless of the level of the rates.

By Exam. Trezise:

Q. Well, Mr. Dilli, your line, of course, serves the Princeton and Boonville Group, is that right?

A. Yes.

Q. It does not serve the Brazil-Clinton or the Linton-Sullivan?

A. That is right.

Q. When you state that the present differentials from these various groups should be maintained and that you [fol. 1320] think they are proper—did you say you thought they were proper?

A. Yes, I feel they are. They are in the light of the decisions of the Commission in several cases before us. They involve the same thing, particularly I. & S. 4368.

Q. Then you have given consideration to the difference in distances and that was one of the factors; was it, that you took into consideration when you arrived at the conclusion that the present differentials should continue?

A. Yes.

Exam. Trezise: All right; do we have any other cross examination?

By Mr. Bather:

Q. Mr. Dilli, I believe you stated that the rates might be increased say to Rockford to the extent here at issue of 15 cents a ton and that your differential relationship from the Boonville district and the Princeton district over the Linton-Sullivan District should be maintained. Now, which of the rates would you apply the differential relationship to from the Linton-Sullivan District, a $1.90 rate via the Milwaukee road or the $2.02 rate via other lines?

A. We feel from the Linton-Sullivan, Brazil-Clinton Groups that the rates from all mines in those groups should be the same. Then, we would, of course, continue the present differentials.

Q. Well, on what basis, on the Milwaukee road rate or the rate applying via other lines from the Linton-Sullivan Group?

A. Well, we didn't increase our rate to Beloit by reason [fol. 1321] of the fact you had the $1.90 rate from Brazil-Clinton.

Q. Well, I am talking about Rockford now, not Beloit.

A. Well, yes, I think you ought to have a difference to both Rockford and Beloit.

Q. That is true. The Commission fixed that on the 13 cent basis, but in so far as the rate to Rockford, there are two rates from the Linton-Sullivan Group, one $1.90 rate via the Milwaukee road and a $2.02 rate via other lines. Now, which of those rates would you apply your 7 cent differential to from the Princeton Group and your 10 cent differential from the Boonville Group?

A. I think ultimately we would have to apply the lower rate.

Mr. Bather: That is all.

By Exam. Trezise:

Q. In saying that, do you place any reliance or do you base your answer upon a finding of the Commission in that former I & S case in which they approved going to Rockford, for example, $1.95, which if increased would be about $2.05 now?

A. I would prefer to use a rate prescribed by the Commission.

Q. And the rate here of $2.05 which is proposed to Rockford is the rate that the Commission approved, plus the increases, is it not?

A. Do I understand your statement that the Commission has prescribed $2.05 to Rockford from all mines in the Linton-Sullivan Group?

Q. No. I think that is true, that at least the exhibit [fol. 1322] shows that to Rockford from the Linton-Sullivan Group a rate of $1.95 was approved in I. & S. 4368, to which if you add 10 cents you would have $2.05 for the present rate.

A. Well, if the rate fixed in I. & S. 4368 is to apply from all mines in the group, and that was $2.05, as I understand it, then, of course, we will use the $2.05 rate and make the rates from Princeton 7 cents and from Boonville 3 cents over Linton-Sullivan.

Q. But your line doesn't serve the Linton-Sullivan Group. You are objecting in general?

A. Yes.

Exam. Trezise: All right, proceed, Mr. Bather.

Mr. Bather: That is all I had.

Mr. Wilkinson: May I ask a few questions?

Exam. Trezise: Yes.

By Mr. Wilkinson:

Q. You stated in reply to a question from Mr. Cardy that you served I think two mines, namely Ayrshire and another one in the Princeton Group. Do you publish rates in conjunction with the AW&W Railroad from the mines on that short line?

A. At page 3 of Exhibit 3 of witness Robertson there is found a list of the mines in the Princeton and Boonville District, and in that is shown a list of AW&W mines, which rates are published in connection with the Southern Railway.

Q. There are some four mines in that?

[fol. 1323] A. There are six mines shown in the Princeton Group on the AW&W.

Exam. Trezise: And that would make about eight mines then that you either serve direct or in connection with the AW&W?

The Witness: Well, the tariff mines on the Southern Railway in the Princeton-Ayrshire Group are six mines. I believe there is only Ayrshire No. 8 and Winslow that are the active mines in Princeton on the Southern Railway.

By Mr. Wilkinson:

Q. These mines in the Princeton Ayrshire Group and the Boonville Group are a source of fuel for the operation of your line from Louisville to St. Louis, are they not?

A. I would presume that our purchases for fuel coal are from those mines.

Q. Now, in respect to this difference in distance between Boonville, on the one hand, and the Princeton Ayrshire Group on the other, is it not a fact that for operating convenience the coal from the Boonville Group is backhauled to Huntingburg and then moves west through Princeton and on west to your connection with the north-south carriers?

Mr. Biaett: Mr. Examiner, I don't think this witness has been qualified to answer a question of the character submitted by Mr. Wilkinson.

Mr. Wilkinson: He can say so if he doesn't know.

The Witness: I do know the coal from the Boonville [fol. 1324] Group moves through Huntingburg and there is to be reclassified and moves east or west.

By Mr. Wilkinson:

Q. Purely as a matter of distance, it would be shorter if the movement of the coal went from the mines in the Boonville Group direct through Evansville, wouldn't it?

A. Yes.

Q. Will you refer to page 4 of your exhibit, Mr. Dilli. You show, for example, to Rockford, item 7 on that page, a rate of the Milwaukee, a present rate of $1.90 from Linton-Sullivan to Rockford?

A. Yes.

Q. You show a rate from the IC Railroad of $2.02?

A. Yes.

Q. Whereas on one of the other pages of your exhibit you show a rate from the Linton-Sullivan District—page 6, I think it is—of $1.90 to Rockford.

A. From Illinois Central?

Q. Yes.

A. That is right.

Q. Does that mean that those are rates local to the Milwaukee and to the Illinois Central, that is, that this $1.90 rate which you show on page 4 applies only via the Milwaukee?

A. Yes.

Q. And that the $2.02 rate applies from mines on the Illinois Central if it is participated in by the Milwaukee?

[fol. 1325] A. That is correct. In other words, as to the Milwaukee rate of $1.90, that will move directly over the Milwaukee. The $2.02 rate published from Milwaukee shown on page 6 would apply in connection with the movement of the Illinois Central Railroad.

Mr. Bather: Now, what do you mean by that?

The Witness: I mean that the $1.90 rate shown on page 4 as published by the Milwaukee will move directly over the Milwaukee Road. Then on page 6 we have the rate to Rockford published by the Milwaukee moving in connection with Illinois Central Railroad, $2.02.

Mr. Bather: Well, have the Milwaukee any rates from Linton-Sullivan to Rockford in connection with the Illinois Central Railroad?

The Witness: $2.02.

Exam. Trezise: Now, if your exhibit is wrong, why, you are going to correct it later.

Mr. Wilkinson: If our exhibit is wrong, we will correct it.

By Mr. Wilkinson:

Q. I want to find out this, Mr. Dilli, do you know whether or not there is a reciprocal switching arrangement between the carriers at Rockford?

A. I do not know that to be a fact, but I assume it would be because of the traffic.

Q. Under such a reciprocal switching arrangement would [fol. 1326] this $1.90 rate published by the Milwaukee apply to any delivery in Rockford that was merely switched at Rockford by the switching lines there?

Mr. Stadell: Now, I object to that, Mr. Examiner. The witness said he didn't know whether there was a reciprocal switching arrangement between the lines at Rockford. He said he assumed there was. Now, if he doesn't know, then I object to his answering the question.

The Witness: I don't know that to be a fact.

Mr. Stadell: Then I object to the question.

Exam. Trezise: The Examiner is interested in having that $1.90 rate made clear here. Mr. Dilli said it applied only by the Milwaukee and I understood you had an exhibit showing it by the Milwaukee and the Illinois Central.

By Mr. Wilkinson:

Q. Does the Illinois Central, as shown on page 6 of your exhibit, also publish a rate of $1.90 applicable via the Illinois Central to Rockford?

A. That is correct, yes.

Q. Whereas the C&EI publishes only a rate of $2.02—it has no $1.90 rate?

A. That is correct.

Q. Both the Milwaukee and the Illinois Central reach Rockford via their own rails from the Linton-Sullivan Field?

A. Yes.

Exam. Trezise: On a $1.90 rate?

[fol. 1327] The Witness: Yes.

By Mr. Wilkinson:

Q. At page 21 of your exhibit, Mr. Dilli, in the last two panels on that page you show difference, in the last right-hand column, difference, Princeton-Ayrshire and Linton, as 7 and 11.

A. Yes.

Q. Should that 11 not be 19?

A. It would be 19 if you use the $1.90 rate from Linton-Sullivan as compared with the $2.10. But those figures in the last two columns are only to represent the differences opposite the railroads shown under the column headed "published by." Now, to get the actual difference as between the lowest rate and the highest rate, you would have to use, let us say, the $1.90 rate that was published by the Illinois Central and the $2.10, which would be 19 cents.

Q. Well, the $2.10 is from Southern Illinois, is it not?

A. Yes, and the $1.90 from Linton-Sullivan, the lowest rate. The difference between those two would be 19 cents. But the figures I have shown is the difference between the two groups of mines as published by the individual carriers.

Q. Well then, go to your top panel, where you show a

$2.00 rate from Southern Illinois, $1.92 from Linton-Sullivan, $1.99 rate from Princeton-Ayrshire, and you show 7 and 19. Isn't that 19 there the difference between the lowest rate of $1.80 from the Linton-Sullivan and the $1.99 from Princeton-Ayrshire?

[fol. 1328] A. Yes, that is correct. Of course, you have the same situation at the bottom.

Q. So your 11 at the bottom should be 19 too?

A. Yes, it could be.

Q. In answer to questions addressed to you by Mr. Cardy you talked of the differentials as between Princeton-Ayrshire and Boonville, on the one hand, and Brazil-Clinton and Linton-Sullivan, on the other. Now, in your mind is there any importance in the differential as between Princeton-Ayrshire and Boonville, on the one hand, and Southern Illinois and the other Illinois groups, on the other?

A. I am not certain that I understand your question, Mr. Wilkinson.

Q. Well, will you refer to page 12 of your exhibit.

A. Yes.

Q. Now, in these territories in Southern Wisconsin the differential of Princeton over Linton-Sullivan is 7 cents?

A. Yes.

Q. Now, isn't it true to those same territories Princeton is 13 cents under Southern Illinois?

A. Generally speaking, yes.

Q. Now, do you figure that the differential between the Illinois mines and Indiana mines, is as important to Princeton as the adjustment between the Indiana mines themselves?

A. Well, they are all definitely related. You could hardly [fol. 1329] get away from a different differential than 13 cents Princeton under Southern Illinois.

Q. You stated that if the differential were increased as between Princeton, on the one hand, and Linton, on the other, that it would operate to reduce the movement of coal from the Princeton-Ayrshire District into this territory?

A. Yes.

Q. Now, assume that the differential as between Princeton and Linton were maintained at 7 cents, but the differential as between both Linton and Princeton were wide materially, or narrowed materially, in relation to Southern Illinois, would that in your opinion affect the movement of traffic from both Linton and Princeton?

Mr. Stadell: I object, Mr. Examiner. This witness has not been qualified to testify on that subject. He hasn't been qualified as an expert on coal sales or the movement of coal from these mines.

Exam. Trezise: Well, let us just ask him, ordinarily, if you changed differentials, you may change the flow of traffic?

The Witness: Well, that is what is always represented to us by our shipping interests.

Exam. Trezise: That is the recognized fact. Ordinarily that is true. Now, whether it is true in this case, that is another question.

By Mr. Wilkinson:

Q. Do I understand, Mr. Dilli, while you haven't made [fol. 1330] any changes in your rates to Rockford and this differential would continue in the present state at Rockford, it is your opinion that in all this Northern Illinois territory you have shown here you should have the uniform adjustment in differentials?

A. Yes.

Mr. Wilkinson: That is all.

Exam. Trezise: Well, what you call uniform is the continuance of the present differential?

The Witness: Yes, that is what I had in mind.

Mr. Wilkinson: Well, what we call standard differentials, the same ones that apply at Southern Wisconsin, the 7 cents and 13 cents there shown, if that is what you mean by "present."

Exam. Trezise: Well, the present ones, are you going to call them standard ones? I don't know just what you mean.

Mr. Wilkinson: I say, when you say present differentials, you don't have much of a differential adjustment at Rockford. Now, I understand a differential adjustment is something that is constant over a certain territory, not where you have one differential at one place and another one at another point two miles beyond and still a third one four miles further.

Exam. Trezise: Then what you are driving at is that the differentials should be changed to some place to make them uniform to meet your so-called standard, which is, as I understand it, a differential that generally applies to the [fol. 1331] majority of the points.

Mr. Wilkinson: Yes.

Exam. Trezise: And that those differentials should be changed to that basis.

Mr. Wilkinson: That is right. I take the position that the standard differentials, that that applies generally throughout this territory, Wisconsin, Iowa, Minnesota, most of the points in Illinois.

Exam. Trezise: Let us ask the witness how he feels about it.

The Witness: I feel that the present differentials to the affected territory should be Brazil-Clinton over Linton-Sullivan 7 cents, and Boonville over Princeton 3 cents, which would coincide with the majority of the territory surrounding the affected territory, as outlined in pages 13, 14 and 15 of my exhibit.

Exam. Trezise: You do not subscribe to the inclusion of the Boonville Group in the same rate group as the Princeton-Ayrshire, regardless of the fact that you mentioned there may be somewhat of an artificial haul of some kind?

The Witness: We are not advocating any change in the existing spread as between Boonville, on the one hand, and Princeton, on the other hand, in this proceeding.

Exam. Trezise: Did you mean to infer by saying that coal from Boonville was possibly hauled farther than it [fol. 1332] should be that that could be avoided, or do you know about that?

The Witness: I don't think that we would transport coal through Evansville which might make a shorter distance than through Huntingburg. Does that answer the question?

Exam. Trezise: Well, you have answered that question. My question was in general, whether or not there is an artificial haul on the coal from Boonville, thus increasing the rate to a greater extent than would be absolutely necessary if efficiency was put in practice.

Mr. Dixon: Mr. Examiner, what do you mean by artificial?

Exam. Trezise: Do you know what I mean when I say "artificial," Mr. Dill?

The Witness: I think you mean when we have a route that may be somewhat greater through Huntingburg than if it were handled through Evansville, and that is what you probably mean.

Exam. Trezise: Unnecessary, we will say, instead of artificial, an unnecessary haul.

The Witness: No, I couldn't agree with you on that because the probability is that while we do handle it a greater distance through Huntingburg than via Evansville, we do it because the operating conditions are more suited to hauling it via Huntingburg than via Evansville.

Exam. Trezise: You say because you do it there must be some reason for it.

The Witness: Undoubtedly.

[fol. 1333] Mr. Dixon: Gives you a better haul is one reason.

The Witness: Well, you get better divisions on it.

Exam. Trezise: All right, continue.

Mr. Wilkinson: I finished my questions.

Mr. Biaett: I have a few questions, if I may.

Exam. Trezise: All right, Mr. Biaett.

By Mr. Biaett:

Q. Mr. Dilli, will you refer to page 12 of your exhibit 17, please.

A. Yes.

Q. The points shown as red on page 12 of that exhibit are points to which the Southern *Railroad* has published the rates under suspension in Northern Illinois, are they not?

A. Yes.

Q. Were those rates published voluntarily by the Southern?

A. Yes.

Q. Now, to those points as I read the exhibit the differentials Princeton over Linton-Sullivan are 7 cents over the higher rate from Linton-Sullivan and 19 cents over the lower rate from Linton-Sullivan, are they not?

A. That is correct.

Q. Now, to Beloit you show that the suspended differential is a straight 7 cents?

A. Yes.

Q. Now, in publishing your rates to Beloit you voluntarily refused to increase the rates so that the differentials would [fol. 1334] be on the same basis as they are at Rockford and these other points in Northern Illinois?

A. We didn't publish any suspended rate to Beloit.

Q. Well, in publishing rates to Beloit, although you made no change, you did not publish them on the same basis as

the other carriers from Princeton and Boonville, is that correct?

A. That is correct.

Exam. Trezise: You did do that at the time you published them, didn't you?

The Witness: Oh, initially, but you mean following the rates under suspension?

Mr. Biaett: No; when these tariffs were filed.

The Witness: The tariffs under suspension?

Mr. Biaett: Yes, when the tariffs under suspension were filed.

Exam. Trezise: You didn't change any rate.

The Witness: To Beloit.

Mr. Biaett: To Beloit, that is correct.

The Witness: That is correct.

By Mr. Biaett:

Q. Now, the other carriers in publishing rates to Beloit put in this 7 and 19 cent differential basis Princeton over Linton-Sullivan, did they not?

A. Yes.

Q. Now, if you don't see any objection to publishing voluntarily rates to Rockford, Northern Illinois; on that 7 and 19 [fol. 1335] cents, what objection do you see to that differential to Beloit?

A. In the majority of cases we are 7 cents over Brazil-Clinton.

Q. But you see no objection to it to Rockford and the other points?

A. Yes. I can't see that it is entirely correct.

Q. Well, whether you see any objection to it or not, you voluntarily published them?

A. Yes, we did.

Exam. Trezise: Well, your page 12 is not designed to show where you published proposed rates, but that some of the carriers in the proceeding did publish proposed rates?

The Witness: We published the rates under suspension, we published to Rockford and the points shown in red. We didn't do it to Beloit, however.

By Mr. Biaett:

Q. Now, with respect to your position, Mr. Dilli, my impression is that the Southern Railway is interested in a uniform rate or uniform differential to be applied from Brazil-Clinton and from Linton-Sullivan. That is correct, is it not?

A. Will you state that over again?

Q. The Southern Railway is interested in the application of a uniform rate from Brazil-Clinton, that is, the same rate via all lines, and a uniform rate from Linton-Sullivan, that is the same rate via all lines, is it not?

[fol. 1336] A. Yes, that is correct.

Q. Now, you also stated, did you not, that the Southern Railway had no objection to the level of these rates, but you were interested primarily in the differential relationship between Princeton and Boonville, on the one hand, and Linton-Sullivan, on the other?

A. I qualified that statement by saying we thought that the rates from all mines in the group should be the same.

Q. Well, in that case, I take it, that it doesn't make any difference to you whether a uniform rate from Brazil-Clinton, say, would be established on the Milwaukee basis or it would be established on the basis of the lines publishing higher rates than the Milwaukee?

A. My answer would have to be obviously, yes, because that is our position here, that there should be one rate. Whatever that rate may be, then we think it ought to be one rate from the entire group.

Exam. Trezise: Didn't you tentatively at least subscribe to the basis the Commission found in I. & S. 4368 plus the increase?

The Witness: Yes. I qualified my statement further by saying I would prefer to have the rate as established by the Commission or what you will find.

By Mr. Biaett:

Q. Now, Mr. Dilli, you are familiar with the exhibits introduced in these proceedings, are you not?

[fol. 1337] Not too much in detail. I was here when they were all filed.

Q. Do you know whether or not the exhibits which have been introduced in this proceeding show that to the 12 rep-

resentafive suspended points which the carriers have selected the distance from Princeton and from Southern Illinois is approximately the same? I think Exhibit No. 11 will show the data that I am referring to, Mr. Dilli.

A. Well, if it is in the exhibit, why, I presume that the exhibit is correct. If that is a fact, I can't refute it.

Q. Those exhibits also show, do they not, that the distance from Boonville to the representative suspended points is approximately 30 miles greater than the distance from Southern Illinois?

A. Are you speaking of Exhibit 11?

Q. Yes. That is the composite of the other exhibits. I believe that exhibit shows approximately 361 from Southern Illinois, 358 from Princeton, and 391 from Boonville, does it not?

A. 361, yes.

Exam. Trezise: And Boonville is 391, is that right?
The Witness: Boonville, 391, yes.
Exam. Trezise: 30 miles.
The Witness: 30 miles.

By Mr. Biaett:

Q. Now, in view of the fact that the average distance from Princeton is 358 miles and the average distance from [fol. 1338] Southern Illinois is 361 miles, do you know of any reason why a different rate should apply to these points from Princeton than applies from Southern Illinois?

A. If you are going to consider it from the standpoint of distance and distance alone, there probably is no reason why. But there are other elements that enter into it, such as the grouping of long standing that the Commission has referred to in any number of cases.

Exam. Trezise: Now, Mr. Dilli, when you testified about this relationship and grouping relationship, I understood you were talking about the grouping relationships in Indiana, one group compared with the other. At least you directed your testimony to that. Now, are you going outside of that and coming over into Illinois or over into Western Kentucky or some of these other places and making the same sort of statement?

The Witness: No, I hadn't intended to do that, but he asked the question and I attempted to answer it. I have

stated continuously that our interest was primarily in the relationship as between Princeton-Boonville and Linton-Sullivan.

Exam. Trezise: And your former testimony had reference to the relationship of the Indiana groups particularly, and now you have gone outside of that and are talking about the relationships to Illinois, is that right?

The Witness: He has gone outside.

[fol. 1339] Exam. Trezise: Yes, he has gone outside. All right, go ahead.

By Mr. Biaett:

Q. Now, irrespective of this relationship between the Indiana groups, on the one hand, and the Illinois groups, on the other hand, do you know of any reason why a different rate should apply from Princeton than applies from Southern Illinois?

A. If distance is the controlling factor, then I am frank to admit that the rates would probably be the same providing the distance is the same. But in instances that I have cited in my exhibit the Commission has said the distance is not controlling and that groupings once established should not be lightly considered or disturbed; and these groupings certainly have been in effect for a number of years.

Q. And you are speaking there of the groupings between the Indiana mines solely?

A. Primarily, yes.

Q. Without regard to their relationship to the rates from the Illinois mines?

A. Yes. It works out, however, that the basis for your rates reverts way back to a difference between Southern Illinois, on the one hand, and Princeton, on the other, the way the rates are related to each other.

Q. And by that comparison it is your position that you can secure a lower rate from Princeton than you can from Southern Illinois irrespective of the fact that the distance [fol. 1340] is substantially the same?

A. That is right. The basis for the rates reverts right back to Princeton being under Southern Illinois.

Mr. McElroy: You can't lose on that deal, can you?

The Witness: No.

By Mr. Biaett:

Q. Now, if we are not going to consider distance in establishing these rates and the relationship of these rates, what other factors are we going to take into consideration?

A. I suppose initially distance was considered, competitive conditions, undoubtedly competition between the several groups of mines.

Q. Now, you take the position that distance isn't controlling in this Indiana adjustment which when applied in that manner gives you a lower rate than Southern Illinois. Now, what factors are taken into consideration if distance is not?

A. Competition, I suppose.

Q. What kind of competition?

A. Market competition.

Q. Market competition?

A. The ability of the mines to compete with each other.

Q. Now, the Southern Railway serves the Princeton and Boonville groups, does it not?

A. Yes.

Q. But it does not serve this destination territory?

[fol. 1341] A. No.

Q. Does it connect with any line which serves this destination territory through which the rates apply?

A. Yes, Illinois Central. We have a route in connection with the Illinois Central. I believe the majority of rates, though, there is an intermediate carrier, overhead carrier. I don't have all the routings here.

Q. There are at least two carriers and often three carriers involved, are there not, in the rates from Princeton or Boonville to the suspended points in Northern Illinois?

A. Yes.

Q. Now, can you estimate what percentage of the haul the Southern participates in?

A. I wouldn't attempt to give you a figure. It is a small part of the total haul.

Q. A small part of the total haul?

A. Yes.

Q. Then it is your position, is it not, that the other carriers who are involved in this proceeding should join in rates with the Southern from Princeton and Boonville to representative suspended points in Northern Illinois, which are not justified by the difference in distance between

Princeton and Boonville and Southern Illinois, in order to enable the Southern to meet others in market competition?

A. Yes.

[fol. 4342] Mr. Biaett: That is all I have.

By Mr. Vesey:

Q. Would you carry that same principle on throughout the relationship between the other groupings in Northern Illinois?

A. Do we carry it?

Q. I say, would you carry that thesis, that theory?

A. We have all along.

Q. In other words, that would meet your approval in the establishing of a so-called just and reasonable rate structure?

A. I am not certain I follow you.

Q. Well, let's put it in another way. As I understand your answers to Mr. Cardy, it was a fundamental pillar in establishing a just and reasonable rate structure that you maintain the differential relationships between groups which as you said later on were of long standing, is that right?

A. That is right.

Q. Now, I take it, that there is some basis upon which you arrive at those differential relationships, is that right?

A. Yes.

Q. What is that basis?

A. Certainly not distance.

Exam. Trezise: But distance has something to do with it?

The Witness: Some element, it is one of the elements, obviously, but the principal element is the competition, the ability of the mine to produce in competition with the [fol. 4343] nearer producing point to the ultimate destination or consuming point.

Exam. Trezise: Do you say that is the principal element?

The Witness: The ability to compete, one mine to compete with another.

Exam. Trezise: You don't mean that would take precedence over distance, do you?. Wouldn't distance be more important?

The Witness: No, I think not. I think the element of competition is more important than distance.

Exam. Trezise: You wouldn't carry that to an extreme though, would you?

The Witness: The question of competition? You couldn't carry it to such an extreme that the ultimate rate would not be compensatory, obviously.

Exam. Trezise: Well you mean that the rate for 10 miles, if it were the same as for 500 miles, you wouldn't say that that was right?

The Witness: No, not at all. I am speaking of the element of distance and when talking about the element of distance, it is the shorter distances not the extreme.

Mr. Biaett: Are you through, Mr. Vesey?

Mr. Vesey: I will defer to you.

Mr. Biaett: No, go ahead.

Mr. Vesey: Well, I am through.

By Mr. Biaett:

Q. In speaking of this differential which you think should be 7 cents Princeton over Linton, do you know the Princeton [fol. 1344] distance, between Linton-Sullivan and Princeton-Ayrshire, to the representative suspended points in Northern Illinois?

A. You want Princeton versus Linton-Sullivan, is that it?

Q. Yes.

A. Well, it is about 64 miles to the suspended territory.

Q. Isn't it more than that, and that differential is 7 cents, is it not?

A. Yes.

Q. Now, Mr. Dilli, do you know of any other differential between two groups in this particular adjustment in Illinois and Indiana and Western Kentucky as low as that differential of 7 cents for 63 miles?

A. In this particular adjustment?

Q. In this particular adjustment. That is the only one we are interested in here.

A. Well, that is the only difference we have got as between these mines, and the 7 cents, that is the only difference that you do have.

Q. Well, do you know of any other place in this adjustment where the difference between two groups is 63 miles and there is as low a differential between them as 7 cents?

Mr. Vesey: I object to that question unless we find out first whether there is a comparable relationship.

Mr. Biaett: I am asking him if he knows.

[fol. 1345] The Witness: No.

Exam. Trezise: The answer is, no.

By Mr. Biaett:

Q. With respect to Boonville over Princeton the differential there is 3 cents, is it not?

A. Yes.

Q. And you have stated that the difference in distance was approximately 40 miles?

A. Yes.

Q. Now, do you know of any differentials between any two other groups in this adjustment where the differential is on as low a level as 3 cents for 40 miles?

A. No.

Mr. Biaett: That is all.

By Mr. Cardy:

Q. Do you know of any mines in Illinois where they are located probably 100 miles apart, where they take the same rate, like for illustration, the Springfield District?

A. And Southern Illinois.

Q. Now, one other question, do you know whether or not there are any routes over which coal moves from Southern Illinois to this northern territory that might be graded on the mileage from Boonville to the same destination?

A. I believe there are some, yes.

Q. You don't know what the average figure overall would be if you compared the movement from Southern Illinois via some of these long routes as compared to the actual mileage from Boonville, do you?

[fol. 1346] A. No.

Q. The Southern Railway is the only line that serves the Boonville district and necessarily you have to take that mileage to destination. That is true, is it not? The Southern Illinois District has a great many mines and a great many routes——

Mr. Stadell: Are you testifying now or asking a question?

Mr. Cardy: I am asking him now whether or not the fact that there are a great many routes from Southern Illinois and only one route from the Boonville District might have

some effect on the comparative mileage that we have in this proceeding, so far as the actual movement of coal is concerned.

Mr. Stadell: I object. There has been no showing there is only one route from Boonville or that there are many from Southern Illinois.

Exam. Trezise: He may answer if he knows.

The Witness: Well, the distances and routes are all shown in Section 4 of Robertson's Exhibit, from all the different mine groups.

Mr. Stadell: Well, it is already in the record, then, and it is repetition and I object to it.

Mr. Cardy: All right, that is all.

Exam. Trezise: Any further questions of Mr. Dilli?

Mr. Stadell: I have some questions.

Exam. Trezise: Mr. Stadell.

By Mr. Stadell:

Q. In your prepared statement, Mr. Dilli, that was read [fol. 1347] into the record, you stated that the Southern Railway did serve mines at one time in the Belleville, Illinois Group. Could you tell us how many mines it served in that group? I am not talking about the tariff origin points that are shown in Robertson's Exhibit No. 4 that you are looking at. I am talking about the mines.

The Witness: I don't have that handy.

Q. Does the Southern Railway serve any mine in the Belleville, Illinois Group at the present time?

A. I understand there is only one mine operating in the Belleville group, Mauren, I believe. Did you say Southern Illinois?

Q. No, I asked you if the Southern Railway serves any mine at the present time in the Belleville, Illinois group?

A. Mauren is in the Belleville Group, is it not?

Q. I couldn't tell you.

A. Apparently not. Here they are listed, in Belleville, Little Oak Mine, Mauren Mine, Oak Hill Mine, Shiloh.

Exam. Trezise: And you are reading from page 2 of Exhibit 3?

The Witness: Yes.

By Mr. Stadell:

Q. Do you know whether those are mines or tariff origin points?

A. Tariff origin points.

Q. Do you know whether there are any mines in operation on your railroad at those tariff origin points at the [fol. 1348] present time in the Belleville District?

A. I don't think there are.

Q. Does the Southern Railway serve mines in any other district in Illinois?

A. No.

Q. Does it participate in hauling coal or in the rates from any mine in Illinois to any point in the affected territory?

A. No.

Q. What are the mines that are served by the Southern Railway in the Boonville, Indiana Group?

A. Boonville?

Q. Yes. I want the names of the mines, not the tariff origin points.

A. You want the operator?

Q. Yes, I would like to have the operator, the name of the coal operating company, the name of the mine or the number of the mine, if you can give it to me.

A. Algers, Winslow & Western Railway located at Oakland City.

Q. That isn't your railroad, is it?

A. Well, we connect with the AW&W. If you don't want that——

Q. Well, give that.

A. Ayrshire Patoka Colliers Corporation at Ayrshire; ES&N Railroad at Chandler.

Q. Is that the name of a mine or the name of a railroad?

A. It shows in our Car Distribution as the name of the operator.

[fol. 1349] Q. What was that again?

A. ES&N Railroad at Chandler; Sunlight Coal Company No. 11, Boonville; New Liberty Coal Company—wait, we can cut that out because it doesn't show any tonnage ratings; the Mariah Hill Super Block Coal Company at Dale, and that is all. That was taken from our Coal Car Distribution for July, 1943.

Q. Now, those are the mines, as I understood it, that are located on the AW&W?

A. No, they are located on the Southern and the AW&W.

Exam. Trezise: All of them?

The Witness: The only mines located on the AW&W would be—did you want the name of the operators—Algers, Winslow & Western Railroad. The rest would be located on the Southern Railroad.

By Mr. Stadell:

Q. You say the only mine located on the AW&W is the Algers, Winslow & Western Railway?

A. No. You asked me for actual producing points. I can't give you them as to individual points, because I don't have the movement, all the billings to take it from. We just have to call that points on the AW&W Railway. There are several of them as indicated in Robertson's exhibit.

Q. Several mines?

A. Yes. Probably, Mr. Stadell, there will be the operators, I presume, here to testify that and probably they can tell you better about that.

[fol. 1350] Q. I am interested in getting the information from you because you very freely expressed your opinions here as to whether the movement from these mines would be stifled, and I assumed that you at least knew the names of the mines or the coal operating company.

A. The AW&W are producing at Bryant and Canal, Indiana, Cato, Enosville, and Globe.

Q. That isn't the name of the mine. That is just the tariff origin point at which the mine is located?

A. That is right. I don't know the names of the mines.

Q. Now, these origin points, or whatever they are, that you have given me, are those the ones on the Southern Railway and the AW&W in the Princeton District?

A. The AW&W mines in the Princeton District, and I think—I gave you a series of figures, didn't I? That would be all, both in Princeton and Boonville.

Q. You mean you make no distinction if they are located in Princeton or Boonville?

A. I can make a distinction.

Q. Will you do that?

A. Princeton would be the AW&W—shall I give you the names of these points shown in the tariff again?

Q. No, that doesn't help any.

A. All right. As to Southern Railway, it is Ayrshire No. 8——

Q. That is in the Princeton District?

[fol. 1351] A. Yes, and Boonville is Boonville, Indiana, Chandler, Dale, Lincoln City, and Stevenson, Indiana Sunlight No. 11.

Q. That still isn't the name of the mine or the operating company in the Boonville or Princeton District, is it? It is just the origin point at which those mines are located.

A. We know the Sunlight is a mine.

Q. That is the only one that you know is a mine?

A. I know Ayrshire No. 8 in Princeton is a mine.

Q. Can you tell us what proportion of the coal shipped from mines in the Princeton District originates at the mines served by the Southern Railway in any one year?

A. No, I can't.

Q. Can you tell me what proportion of the total coal that is shipped from mines in the Boonville District originates at those mines served by the Southern Railway?

A. No.

Mr. Dixon: You know that, don't you?

The Witness: No. He is speaking of all your coal in Indiana as compared with Boonville.

Mr. Stadell: No, I am talking about Boonville.

The Witness: Will you restate the question.

Mr. Stadell: Will you read my question, please.

(Question read.)

The Witness: All of them, because the only mines in the Boonville District are located on the Southern Railway.

[fol. 1352] By Mr. Stadell:

Q. Now, in connection with coal originating at mines on the Southern Railway that is destined to points in the Northern Illinois territory involved in this proceeding, where would the Southern Railway turn that over to some other railroad, and give us the name of the railroad.

A. I don't have all the tariff routes here.

Q. Well, I understood Mr. Cardy told you there was only one.

A. One junction point.

Q. One tariff route.

Mr. Cardy: One originating line.

The Witness: No, we have a number of connections. Browns would be one. Mt. Carmel would be another.

By Mr. Stadell:

Q. In the case of Browns, tell me the name of the railroad to whom the Southern Railway would turn that traffic over?

A. Illinois Central.

Q. Illinois Central at Browns. What other railroad would you turn it over to and at what point?

A. No doubt we have routes in connection with the Big Four through Mt. Carmel, B&O through Fairfield, C&EI through Mt. Vernon.

Q. Big Four through Mt. Carmel, B&O through what?

A. Fairfield.

Q. Fairfield, Illinois?

A. Yes; C&EI, Mt. Vernon; Illinois Central and CB&Q, [fol. 1353] Centralia. I am satisfied that we have routes via all those junctions. I can't tell you all offhand.

Q. Do you mean to say, Mr. Dilli, that the Southern Railway would haul coal from mines on its line in the Boonville District going to Rockford or Freeport, for example, clear over to Centralia, Illinois, through the Southern Illinois Group, and there turned over to the Illinois Central or CB&Q?

A. I can't tell you exactly how it is handled, Mr. Stadell, but I am satisfied we have routes through those junctions.

Q. And despite the fact that you would haul it all that excess distance from the Boonville Group, through Southern Illinois Group, over to Centralia, where it would be turned over to a railroad going to Rockford, you still want a 10 cent lower rate than from the Southern Illinois Group?

A. Yes.

Q. Can you tell us or can the information be obtained from Mr. Robertson's exhibit showing the mileage from mines in the Boonville District over the Southern Railway to the point where you would turn the traffic over to the Illinois Central or the Big Four, B&O or CB&Q?

A. I think he has in his exhibit, Section 4, the shortest and longest distances, in fact, all the distances via the different routes.

Q. What I am particularly interested in getting, Mr. Dilli, is the mileage that the Southern Railway hauls the

[fol. 1354] coal that you originate in the Boonville Group to the junction where you turn it over to some of the lines, that is the traffic going up to the suspended territory.

A. You mean our distance to the junction point?

Q. Yes, that is right.

A. No, I don't believe it is in here.

Q. Can you give that to me?

A. Yes, I can get it out of our distance table.

Q. I don't want you to take the time now, but will you later?

A. Would you like for me to get the distance from the junction point to some specific destination point and via the routes——

Mr. Stadell: Take Rockford, Freeport and Beloit.

Mr. Dixon: Mr. Stadell, why don't you do that?

Mr. Stadell: Why don't I do that?

Mr. Dixon: Yes.

Mr. Stadell: He has got the information.

The Witness: Well, it is on file with the Interstate Commerce Commission, but I don't object to furnishing it. Are you the only party that wants it? We don't have a copy of the transcript and we don't have the names of the parties of record.

Mr. Stadell: If you furnish it to me, I will see it gets in the record.

The Witness: You want Freeport?

Mr. Stadell: Rockford, Freeport and Beloit. What I would like to have is the distance that the Southern Railway hauls——

[fol. 1355] The Witness: To our junction points?

Mr. Stadell: To your junction points, on coal that you originate in the Princeton and Boonville groups going to those three destinations.

The Witness: Yes.

Mr. Cardy: Mr. Stadell, would that distance be comparable to the distance you are using from Southern Illinois?

Mr. Stadell: I don't know. You can argue that.

Mr. Cardy: Will you have the same information from Southern Illinois?

Mr. Stadell: Yes, we will.

Mr. Dixon: Is that information to be via a tariff route only or via a route from which there is an actual movement of coal?

Mr. Stadell: That is tariff routes.

Mr. Dixon: You want the average distances now from the Boonville Group to those three destinations via all tariff routes, is that right?

The Witness: There would only be three or four.

Mr. Stadell: That is right.

Mr. Dixon: There are several tariff routes. What do you mean?

The Witness: I mean junction points.

Mr. Dixon: Then after you get beyond the junctions, like Centralia and those others, then you have plenty.

[fol. 1356] The Witness: Yes, that is true, but he doesn't want those distances. He wants our distances to the junction.

Mr. Dixon: Oh, just to the junctions?

The Witness: Yes.

Mr. Stadell: That is right.

Mr. Dixon: Oh.

Exam. Trezise: In order that the record may be clear, the witness stated that he understood that the distances were shown in these exhibits 3 or 4 over the shortest routes and the short routes, and all distances. The Examiner wants to state for the record he has been unable to find any distances of the average of the shortest tariff routes from any of the Indiana groups to any destinations. Go ahead.

By Mr. Stadell:

Q. Now, I am not sure that I understand exactly your position or the position of the Southern Railway in this proceeding. Was the testimony that you have given here presented on behalf of the Southern Railway only or was it presented on behalf of all of the railroads that are parties to the proceedings?

A. Southern Railway only.

Q. Are you appearing or was your testimony offered in support of the proposed increased rates that are under suspension, that you stated were voluntarily published by the Southern Railway from mines on your line in the Boonville and Princeton Groups to Rockford, Freeport, and the [fol. 1357] other Northern Illinois points involved?

A. I don't necessarily take the position that the rates that are published and suspended are absolutely correct in so far as the differentials are concerned, and that brings us back to the two rates from the Brazil-Clinton and Linton-Sullivan Groups. I would like to see it straightened out as nearly as possible as the Commission did in I. & S. 4368.

Exam. Trezise: When you say straightened out, you mean what they did in that proceeding?

The Witness: Yes.

Exam. Trezise: What they approved in that proceeding, you call that straightening it out?

The Witness: Yes; but it wasn't straightened out under the suspended basis, in that they still continued to publish from the Linton-Sullivan Group two lines of rates, and we take the position the Commission in 4368 intended that one rate be published from all mines in the group.

By Mr. Stadell:

Q. Do I understand your testimony then is offered in opposition to the proposed increased rates that the Southern Railway had voluntarily published from its Boonville and Princeton mines to this Northern Illinois territory?

A. To the extent that it is different from those approved by the Commission in I. & S. 4368, that would be a correct statement.

Q. And those are the rates that you are advocating in [fol. 1358] lieu of any of the rates that are involved in this proceeding?

A. Those fixed by the Commission or approved in I. & S. 4368.

Q. And by those you mean those that you say they approved from the Indiana mines?

A. Yes.

Q. Are you advocating the approval of the rates that were involved in that case from the Illinois mines?

A. I think it naturally follows that we would.

Q. Now, you stated in answer to a question by Mr. Cardy that you thought these differences or differentials of 7 cents Princeton over Linton-Sullivan for about 63 miles difference in distance, and the 3 cents Boonville over Princeton for about 40 miles difference in distance, were proper and

reasonable, based upon your knowledge of the transportation conditions in this territory. Is that what you stated?

A. I don't know. I believe I stated that we were relying on the Commission's decision in Docket 4368.

Q. That is all you are relying on, that decision?

A. Yes.

Q. And you have no further justification to offer in support of what you are advocating except that decision?

A. That and the fact that the differentials have been in effect for a long period of time, and I rely on what the Interstate Commerce Commission has said in many other cases that once a group adjustment has been established it [fol. 1359] shouldn't be lightly considered or disturbed.

Q. Has the Interstate Commerce Commission in any case that you know of ever prescribed the 7 cent differential Princeton over Linton-Sullivan, or Boonville over Princeton 3 cents?

A. 4368.

Q. They prescribed it?

A. Approved it in 4368.

Q. Do you know any case in which those differentials have ever been prescribed?

A. No.

Q. Do you know of any other case where as you say they have ever been approved between those groups?

A. I believe I stated that in my direct, Mr. Stadell. I stated this in my direct: The Interstate Commerce Commission has given consideration to this question, the latest decision being I. & S. 4368, decided April 10, 1939, reported in 232 ICC 151. Finding 2 of that decision is shown on page 170 of the report, and found not justified a differential in excess of 7 cents Princeton over Sullivan and 3 cents Boonville over Princeton. At page 167 of the same report the Commission refers to the fact that in Illinois Coal Traffic Bureau case, reported in 204 ICC 225, the same question was there before them.

Q. Well, the last case you referred to involved only the differentials between Southern Illinois and the Indiana groups, didn't it?

A. 4368?

[fol. 1360] Q. No, the last case you referred to, 204; if you know?

A. I can tell you by referring to it.

Q. That is all right. The decision will speak for itself. Now, prior to 1930 there were a great many mines located on the Southern Railway in the Boonville Group, were there not?

A. Prior to 1930?

Q. Yes.

A. I can't say.

Q. Do you mean to say that you don't know whether there has been a change in that group or not since 1930?

A. You are speaking of the Boonville Group?

Q. I am speaking of the Boonville Group. I thought you knew this rate adjustment down there.

A. I know the rate adjustment fairly well.

Q. Well, you have been talking about these groups being maintained for a long, long time.

A. I haven't checked back to see what mines have been frozen and those that have been open. But I think there were quite a number of mines at one time in the Boonville Group.

Q. On the New York Central Railroad Company?

A. No, I don't know as to that.

Mr. Cardy: Are you talking about Boonville?

Mr. Stadell: I am talking about Boonville, yes.

By Mr. Stadell:

Q. You don't know, then, that in 1930 or about that time the major portion of the mines in the Boonville Group [fol. 1361] were shifted into the Princeton Group for rate making purposes, do you?

A. No, I don't know that.

Q. You mean to say you don't know whether there has been a change in the Boonville Group or not, then?

A. I say, I didn't know what mines were initially operating in the Boonville Group and those that may have been closed.

Q. That isn't what I asked you. I asked you if you know there has been a substantial change in the Boonville Group as far as mines are concerned that were located in that group?

Mr. Cardy: Mr. Stadell——

Mr. Stadell: Just a minute, do you have an objection?

Mr. Cardy: No, but ——

Mr. Stadell: Then don't interrupt. If you have an objection, say so.

Mr. Cardy: Go ahead.

Mr. Stadell: Will you read my question.

(Question read.)

Mr. Stadell: Since 1930.

The Witness: No.

By Mr. Stadell:

Q. Have you ever been employed by a coal mining company?

A. No.

Q. Have you ever sold coal?

A. No, sir.

[fol. 1362] Q. Have you any knowledge of the coal used by the various plants in the suspended territory?

A. No.

Q. Yet you expressed the opinion that if there is any change in the differences in rates between these groups that that is going to affect the flow of the coal from those groups?

A. That is as experience teaches us and by our contact with shippers.

Q. Well, give us your experience with respect to these mines.

A. That is what our operators in the mine territory tell us.

Q. You are depending solely on what they tell you?

A. Yes, that is right.

Q. Not on anything you know about it?

A. That is right.

Q. You said that the movement was of little consequence from the Boonville Group until the 3 cent differential was established over Princeton, is that what you said?

A. Yes.

Q. When was that established?

A. The 3 cent differential?

Q. Yes.

A. Sometime in 1919.

Q. Now, give us the movement from the mines in the Boonville District to any point in the affected territory before that differential was established and for any year since.

[fol. 1363] A. I don't have it.

Q. You mean to say you don't know what that comparative movement was?

A. We probably have it in our files back to that time, but I don't have it here and I saw no necessity for working it up.

Q. You didn't think it was necessary then, before expressing your opinion that the movement was of little consequence before that differential was established, to determine that?

A. I did check it, but I can't tell you the tonnage now.

Q. You didn't think it was necessary to make that comparison?

A. As to the exact tonnage?

Q. Yes.

A. No, I didn't think it was necessary.

Q. You have no present knowledge as to what that movement was before the differential of 3 cents was established or what it has been for any years since?

A. What the tonnage was to the affected territory?

Q. Yes.

A. No.

Q. How can you say then from your present knowledge that the movement was of little consequence from the Boonville Group before the 3 cent differential was established?

A. I had occasion to review our files on the subject at that time.

Q. But you don't remember anything about it now?

[fol. 1364] A. No, not as to the tonnage.

Q. How many mines were located in the Boonville Group prior to May, 1919, when this 3 cent differential over Princeton was established?

A. I don't know.

Q. Do you know whether there was any?

A. You are speaking of the Boonville Group?

Q. Yes.

A. Apparently there was. There were rates published.

Q. You don't know now whether there was any or not?

A. There must have been if there were rates published there.

Q. The rates were published in May, 1919. I am asking you whether there were any mines in that group prior to May, 1919, and if there were, what those mines were.

A. I can't give you any specific reference to any particular mines.

Q. You don't know of your own knowledge then if there were any mines prior to May, 1919, in that group?

A. Only what were shown in the tariff.

Q. What was shown in the tariff?

A. That there were mines in the Boonville Group.

Q. What did the tariff show those mines to be?

A. I haven't the tariff here. I don't know.

Q. So that as far as your present knowledge is concerned, you can't say if there were any or what the mines were?

[fol. 1363] A. Only what was shown in the tariff.

Q. And you don't know what that was?

A. No, not at this time.

Q. Now, the Illinois Central and the CB&Q and the C&EI and the New York Central, all of which you said you interchanged traffic with from your Boonville and Princeton mines going to the suspended territory, serve mines in the Southern Illinois Group, do they not?

A. Name them again, C&EI, CB&Q and what others?

Q. C&EI, New York Central, Illinois Central, and the CB&Q.

A. Yes, that is correct.

Q. Am I to understand, what you are asking the Interstate Commerce Commission to do here is to enter some kind of an order that would compel those railroads to join with you in rates from the Boonville Group, for example, to Rockford 10 cents per ton lower than they maintain from their mines in Southern Illinois, despite the fact that the haul from your Boonville mines to that point are about 50 miles longer than from their Southern Illinois mines?

A. I am asking them to do what they did in I. & S. 4368.

Q. Will you answer my question, please.

A. The answer to your question is, yes.

Q. That is what you are asking them to do. Do you know of any provision of the Interstate Commerce Commission Act that would permit them to do that?

[fol. 1366] Mr. Dixon: Mr. Examiner, I don't think that last question is proper.

Exam. Trezise: I don't think that is proper. Ask him about facts, not about the Act.

Vol. II

TRANSCRIPT OF RECORD

(Pages 863 to 1701)

Supreme Court of the United States

OCTOBER TERM, 1946

No. 467

AYRSHIRE COLLIERIES CORPORATION, ET AL., AND CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA

FILED SEPTEMBER 6, 1946.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 467

AYRSHIRE COLLIERIES CORPORATION, ET AL., AND CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA

VOL. II

INDEX

Record from D. C. U. S., Southern District of Indiana—Continued

Testimony of—

		Original	Print
Petitioner's Exhibits—Continued			
Harry A. Rozene		1381	866
Harold V. Scott		1690	1059
H. F. Hoffman	(omitted in printing)	2058	
A. S. Boden	(omitted in printing)	2098	
H. F. Cholet		2128	1275
A. J. Christiansen		2174	1292
D. W. Forsberg	(omitted in printing)	2287	
J. H. Ederstrom	(omitted in printing)	2300	
B. F. Hampshire	(omitted in printing)	2312	
W. F. Neff	(omitted in printing)	2334	
D. A. Kirane	(omitted in printing)	2346	
Morton Abelson	(omitted in printing)	2361	
A. J. Christiansen (recalled)		2373	1360
Harold V. Scott (recalled)		2380	1363
A. J. Christiansen (recalled)		2398	1374

Judd & Detweiler (Inc.), Printers, Washington, D. C., Feb. 3, 1947.

	Original	Print
Record from D. C. U. S., Southern District of Indiana—Continued		
Testimony of—		
PETITIONER'S EXHIBITS—Continued		
Harold V. Scott (recalled)	2464	1416
A. J. Christiansen (recalled)	2469	1418
R. H. May	2534	1454
Harry G. Nevins (omitted in printing)	2626	
A. J. Christiansen (recalled) (omitted in printing)	2624	
Harry A. Rozene (recalled)	2681	1484
W. Y. Wildman	2756	1549
A. J. Christiansen (recalled)	2763	1554
B. M. Hamilton (recalled)	2765	1555
Walter H. Kuhls (recalled)	2804	1581
C. J. Nelson (recalled)	2830	1598
No. 8—Schedules filed with Interstate Commerce Commission	2860	1614
Supplement No. 51 to The Pennsylvania Railroad Company Local, Joint and Proportional Freight Tariff No. 60-F, I. C. C. No. 2387, said schedule having been filed July 2, 1942	2860	1614
Supplement No. 34 to The Baltimore and Ohio Railroad Company Local, Joint and Proportional Freight Tariff No. C. T. H. 423-C, I. C. C. No. WL-10705, said schedule having been filed July 2, 1942	2865	1619
Supplement No. 54 to The New York Central Railroad Company Local, Joint and Proportional Freight Tariff No. 385, I. C. C. No. 164, said schedule having been filed July 1, 1942	2869	1623
Supplement No. 56 to said I. C. C. No. 164 having been filed July 9, 1942	2873	1627
Supplement No. 10 to Illinois Central Railroad Company Local, Joint and Proportional Coal Tariff No. 3100-H, I. C. C. No. E-1802, said schedule having been filed July 1, 1942	2881	1635
Supplement No. 12 to said I. C. C. No. E-1802 having been filed July 25, 1942	2889	1643
Supplement No. 27 to Chicago, Milwaukee, St. Paul and Pacific Railroad Company Local, Joint and Proportional Freight Tariff G. F. D. No. 15200-D, I. C. C. No. B-7246, said schedule having been filed July 4, 1942	2891	1645
Supplement No. 28 to said I. C. C. No. B-7246 having been filed July 10, 1942	2894	1648
Supplement No. 20 to Chicago, Indianapolis and Louisville Railway Company Local, Joint and Proportional Freight Tariff No. 408-D, I. C. C. No. 4724, said schedule having been filed June 27, 1942	2898	1652

Record from D. C. U. S., Southern District of Indiana—Continued

Petitioner's Exhibits—Continued

	Original	Print
Supplement No. 18 to Chicago & Eastern Illinois Railroad Company Local, Joint and Proportional Freight Tariff No. 100-C, I. C. C. No. 2, said schedule having been filed June 30, 1942	2900	1654
Supplement No. 33 to Southern Railway System Joint Coal Tariff No. 809-G, I. C. C. No. C-2230, said schedule having been filed July 2, 1942	2904	1658
No. 9—Order extending effective date of orders of July 9, 1945, and November 13, 1945, by Commission	2908	1663
No. 10—Same	2909	1664
No. 11—Same	2910	1665

Statement of points to be relied upon and designation of parts of record to be printed	2911	1666
Designation by appellees of additional portions of record to be printed	2924	1674
Order noting probable jurisdiction	2926a	1675
Stipulation as to printed record	2927	1675

By Mr. Stadell:

Q. In other words, while you would request the Commission to do that—what you are requesting the Commission to do is to give your mines in Boonville a 10 cent lower rate?

A. As they did in I. & S. 4368.

Q. Then they would permit the Illinois Central to maintain from their mines in the Southern Illinois Group to Rockford, so you could force your coal from your Boonville mines into Rockford, in place of permitting the Illinois Central to haul its Southern Illinois coal from mines on its own line to such point?

A. I don't know anything about that.

Q. You stated that the difference in distance, in answer to a question by Mr. Cardy, that the difference in distance between some mines in the Southern Illinois Group was 100 miles more. Give me the names of those mines where you claim that?

A. Shall I go through this exhibit and give them to you?

Q. I thought you knew.

A. I got them from the exhibit.

Q. But you don't know what they are now?

A. I can tell you. I looked the exhibit over. If you wish to know, I can dig them out for you again.

[fol. 1367] Q. Don't take the time to check it now. We will check it during recess, if you will.

A. I thought there was no use waiting for me to check them. Here is Southern Illinois to Belvidere, page 4 of the exhibit, which is Section 5, shows that you have a route Missouri Pacific, Mt. Vernon, Illinois, C&EI, Chicago, Illinois, C&NW, 364.8 miles, and that via the New York Central, in the Southern Illinois Group, New York Central, Peoria, Illinois, and C&NW, 525 miles.

Q. What you are talking about is not the distance between the mines, but the distance over some of these circuitous tariff routes?

A. That is right.

Q. Now, do you know of any reason, if the rate of $2.12 from the Princeton Group to Rockford for 360 miles is a just and reasonable rate, why that same rate wouldn't be also a just and reasonable rate for the same or a shorter

distance from the Southern Illinois Group, from a transportation standpoint I am talking about?

A. No.

Q. And you would give the same answer with respect to the comparative rates from the Boonville Group, on the one hand, or the Southern Illinois or other similarly situated groups in Illinois, on the other?

A. From a strict distance standpoint, no, sir.

[fol. 1368] Q. Transportation standpoint, not distance.

Mr. Dixon: Mr. Stadell, I didn't put him on as a transportation expert.

Mr. Stadell: Well, he answered some questions of Mr. Cardy on that basis.

Exam. Trezise: Do you have a number more questions, Mr. Stadell?

Mr. Stadell: A few more. Do you want to take a recess?

Exam. Trezise: Well, I think under the circumstances, gentlemen, we will adjourn until two o'clock.

(Witness excused.)

(At 12:00 o'clock noon, recess taken to 2:00 o'clock P. M.)

Afternoon Session

The hearing was resumed pursuant to recess.

2:00 o'clock P. M.

Exam. Trezise: All right, gentlemen, when you are ready, we will begin.

Carl W. Dilli resumed:

Cross-examination (Continued):

Mr. Stadell: I have no further questions.

Exam. Trezise: Do we have any further cross examination?

Mr. Cardy: Just one question, Mr. Examiner.

By Mr. Cardy:

Q. Mr. Dilli, as I understand it, the real difficulty and reason you didn't publish these rates is the fact that the [fol. 1369] Illinois Central and the Milwaukee Railroad from the Linton-Sullivan District and the Brazil-Clinton District have lower rates than other railroads serving those groups, is that true?

Mr. Biaett: You are speaking of Beloit, now?

Mr. Cardy: To Beloit and to the other points—to Beloit, first.

The Witness: The other lines to Beloit have no lower rate from the Brazil-Clinton or Linton-Sullivan Group, but to the affected territory they do have lower rates.

By Mr. Cardy:

Q. In other words, the Milwaukee and the Illinois Central have lower rates than the roads serving those two districts, and to base the rates from Boonville and Princeton on the higher rated roads, that brings about the disturbance in the differentials?

Mr. Bather: Now, that is not his testimony at all, Mr. Cardy.

By Mr. Cardy:

Q. Well, isn't that the fact? In other words, if the differentials were constructed on the basis of the Milwaukee and Illinois Central rates, going differentials, it would be all right, isn't that true?

A. What we are trying to avoid is a difference in the rates over the Illinois or the Milwaukee from the mine groups. What we would like to have is the same rates from all the mines in those groups.

[fol. 1370] Q. Well, that is the point.

A. Yes.

Mr. Cardy: That is all.

By Exam. Trezise:

Q. Well, Mr. Dilli, in your Exhibit 17 you did not set forth the distances. Is it your thought in constructing that exhibit that if distances made any difference in the rates that you would rely upon Mr. Robertson's exhibits for the distances?

A. Well, in considering exhibits and the testimony we were relying on differentials and not distances, and we knew in advance that Mr. Robertson would file an exhibit of the distances. So we didn't think it necessary to again compile the distances.

Q. I was just trying to make the point whether you regarded the distances of so little relative importance that

you didn't put them in. But you say now that you rely upon the distances, if they have any importance in your mind you rely upon the distances shown in Mr. Robertson's exhibits to guide the Commission in its determination?

A. Yes.

Exam. Trezise: Thank you. Any further questions?

Mr. Dixon: I have one question on redirect.

Exam. Trezise: Oh. Go ahead, Mr. Dixon.

Redirect examination.

By Mr. Dixon:

Q. Mr. Dilli, this morning Mr. Stadell asked you a ques- [fols. 1371-1380] tion which left the impression that coal moving off the Southern Railway westward to such junctions as Browns, Fairfield and Mr. Vernon went through the Southern Illinois Group. Is it not a fact that page 1 of your exhibit 17 shows that that is not correct?

A. Oh, yes. It shows very clearly that Southern Illinois is south of the main line of the Southern Railway extending from Louisville to St. Louis and the Southern Railway not serving the Southern Illinois Group, obviously, we wouldn't handle traffic through that group.

Mr. Dixon: That is all.

Exam. Trezise: All right, Mr. Dilli.

Mr. McElroy: Mr. Dilli, was your railroad a party to the Section 13 petition filed by the Interstate Commerce Commission alleging that the Illinois Intrastate rates, were unduly low, do you remember?

The Witness: Do you know, Mr. Dixon?

Mr. Dixon: It was.

Exam. Trezise: You are excused, Mr. Dilli.

(Witness excused.)

. . . . . .

[fol. 1381] Harry A. Rozene was sworn and testified as follows:

Direct examination.

Mr. Stadell: I might make this statement now. After the prehearing conference Mr. Rozene computed the average

distances over the shortest tariff routes in accordance with the agreement reached during that conference, that is, from all of the Illinois groups except the Belleville, Illinois, group, and that exhibit was distributed to the parties before the last hearing. After that he found a number of errors in that exhibit and he concluded that those should be corrected and that the exhibit should also be reworked to include the average shortest route tariff distances from the Belleville group—and did you have the Indiana groups in the other exhibit?

The Witness: Yes.

Mr. Stadell: To include the average shortest tariff distances in the Belleville group, and he has reworked that exhibit and it is in the set that he has distributed, and that is the exhibit that we are offering for the record, and not the one that was distributed before the first hearing in these proceedings.

Exam. Trezise: Then we may disregard the one that was distributed before?

Mr. Stadell: That is correct. It is the same, except the one we have now includes the average shortest tariff route [fol. 1382] distances from the Belleville group as well as all the other Illinois, Indiana and Western Kentucky groups, and it eliminates the errors in the previous exhibit.

Mr. McElroy: And that previous exhibit does not bear a number, is that correct?

Exam. Trezise: Yes, the one that was distributed did not bear a number.

Mr. Stadell: Now, each of these exhibits in the set *are* identified by a numeral in the lower lefthand corner on the first page.

Exam. Trezise: You can identify them off the record?

Mr. Stadell: Yes.

Exam. Trezise: All right, off the record.

(Discussion outside the record.)

(Exhibits Nos. 20 to 37, both inclusive, marked for identification.)

By Mr. Stadell:

Q. Will you please state your name, occupation and business address.

A. My name is Harry A. Rozene. I am employed as Assistant Traffic Manager of the Illinois Coal Traffic Bureau,

and my business address is 307 North Michigan Avenue, Chicago, Illinois.

Q. What is the Illinois Coal traffic Bureau and what are its functions?

A. The Illinois Coal Traffic Bureau is a voluntary unincorporated association of the coal producing companies [fol. 1383] which own and operate mines in the Southern Illinois, Centralia, DuQuoin, and Danville coal rate groups in the state of Illinois. It was organized and is maintained to protect the interests of its members in all transportation matters, particularly those involving changes in the freight rates and charges on coal from their mines or from the mines of their competitors. The coal mining companies which are members of such Bureau produce and ship more than 95 per cent of the total commercial coal tonnage that is produced in the Southern Illinois group, 80 per cent of the total commercial coal tonnage that is produced in the Danville, Illinois, group, and 100 per cent of the total commercial coal tonnage that is produced in the DuQuoin and Centralia groups by rail served mines.

Q. Do you represent or is your testimony offered on behalf of any other party in these proceedings, and if so, will you please state the name of such party?

A. Yes. My testimony in these proceedings is also offered on behalf of the Central Illinois District Coal Traffic Bureau.

Q. Will you please explain the nature and functions of that organization?

A. It is a voluntary unincorporated association of the coal producing companies which own and operate coal mines in the Central Illinois, or what is more commonly referred to as the Springfield, Illinois, group. The functions which it was organized to perform for its members are the [fol. 1384] same as those which the Illinois Coal Traffic Bureau performs for its members. I have already described those functions.

Q. Will you please briefly outline your experience in transportation work?

A. My experience in transportation matters extends over a period of approximately 27 years. From 1913 to 1923 I was employed by the Illinois Central Railroad in various departments, including the operating and general freight traffic departments, and the office of the auditor of freight accounts. From 1923 until the present time, a period of 20

years, I have been employed by the Illinois Coal Traffic Bureau. During the periods referred to, I have participated in numerous cases before the Interstate Commerce Commission, the Illinois Commerce Commission, and other regulatory agencies in which the rates and charges on bituminous coal and various other commodities were involved. I am familiar, generally, with the rate adjustments applicable on bituminous coal from the mines in Illinois, Indiana, and Western Kentucky to the territories to which such coal normally moves, and also with the rate adjustments applicable on coal from the numerous mines, origin points, docks and rate groups in other parts of the United States, from which coal is shipped to the markets in which Illinois coal is sold.

Q. Have you prepared a series of exhibits for presentation in these proceedings?

A. Yes, I have.

[fol. 1385] Q. Were those exhibits prepared by you or under your personal supervision and direction?

A. The majority was prepared personally by me. The remainder was prepared in accordance with my instructions and under my personal supervision.

Q. Are those exhibits true and correct to the best of your knowledge and belief?

A. They are.

Q. Those exhibits have been marked, have they not, for identification in the record, in the order in which they will be presented?

A. Yes, sir, they have.

Q. Have you prepared an exhibit showing the extent and location of the Southern Illinois, Centralia, DuQuoin, Danville, and other coal producing groups in Illinois, Indiana, and Western Kentucky?

A. Yes, my Exhibit No. 20 is a map on which is shown the boundaries and geographical location of each of the coal producing groups in Illinois, Indiana, and Western Kentucky, as such groups are constituted for rate making purposes. The name of each group is identified by means of a numeral which is explained in the lower lefthand corner of the exhibit. For example, the Northern Illinois group is identified by the numeral "1" which appears within the boundary of such group. The Fulton County group is identified by the numeral "2", the Peoria group by the [fol. 1386] numeral "3", the Springfield group by the

numeral "4", the Southern Illinois group by the numeral "8", and the Brazil-Clinton, Indiana, group by the numeral "10", and so forth, and such numerals appear opposite the names of the respective groups in the lower lefthand corner of this exhibit.

The geographical location of certain individual mines in Illinois which are not generally included in any of the Illinois groups for rate making purposes to the destinations involved in these proceedings, such as the mine at Atkinson, Alpha, Victoria, Augusta, and Rushville, Illinois, is also shown by means of a square drawn around the name of the origin point at or near which each of such mines are located.

Q. What do the solid black dots and dots colored in red, which appear in the upper portion of this map, represent?

A. The solid black dots show the geographical location of the twelve destinations in Northern Illinois which were selected and used by the respondent and petitioning railroads in their rate and mileage exhibits in these proceedings as representative of the numerous destinations in Northern Illinois to which they have proposed increased rates which are here under suspension. The red colored dots show the geographical location of the fourteen destinations in Northern Illinois, Eastern Iowa, and Southern Wisconsin which such railroads have used in their exhibits in these proceedings for comparative purposes; that is, they have used the [fol. 1387] present rates and average mileages from the various groups in Illinois, Indiana and Western Kentucky to such destinations in an effort to justify the increased rates which they have proposed and are seeking in these proceedings to make effective from such groups to numerous destinations in Northern Illinois.

The twelve destinations in Northern Illinois, the location of which is indicated by the twelve solid black dots on my Exhibit No. 20, have been referred to throughout these proceedings as the representative suspended points, while the fourteen destinations in Northern Illinois, Eastern Iowa, and Southern Wisconsin, which are identified by means of the red dots on such exhibit, have been referred to as the representative comparative points. I will refer to them in the same way throughout my testimony.

(Exhibit No. 20, Witness Rozene, received in evidence.)

By Mr. Stadell:

Q. Are the twelve representative suspended Northern Illinois points, which are identified on your Exhibit No. 20, and which you say were used by the railroads in their rate and mileage exhibits, the only points in Northern Illinois to which increases are proposed in the present rates from the Southern Illinois and other Illinois groups in these proceedings?

A. No. Increases are proposed to numerous additional [fol. 1388] destinations in Northern Illinois from the Southern Illinois and other Illinois groups. I have not made a complete analysis of the changes which are proposed in the present rates from all of the Illinois groups to points in Northern Illinois in these proceedings. However, I have prepared an exhibit showing the names of the Northern Illinois points to which changes are proposed in the present rates from the Southern Illinois group. This exhibit, which has been marked No. 21, shows the name of each destination in Northern Illinois to which changes are proposed in the present rates on coal from the Southern Illinois group, the name of the railroad serving such destination, the present and suspended rates from the Southern Illinois group to each of such destinations, and the name of the origin railroad via which the present and suspended rates shown apply. From this exhibit it will be found that increases are proposed in the present rates from the Southern Illinois group to 92 points in Northern Illinois.

(Exhibit No. 21, Witness Rozene, received in evidence.)

By Mr. Stadell:

Q. Have you prepared an exhibit showing the names of the railroads which serve the mines in the various coal producing groups in Illinois, Indiana, and Western Kentucky, the representative comparative points, and the destinations in Northern Illinois to which the proposed increased rates are under suspension in these proceedings?

[fol. 1389] A. Yes. This information, as well as certain additional information, is shown on my Exhibit No. 22. In this exhibit I have shown the name of each of the railroads that serves the mines in each of the coal producing groups in Illinois, Indiana and Western Kentucky, and the names of the railroads which serve the individual mines, such as those at Atkinson and Alpha, Illinois, and so forth, which,

as I previously stated, are not included in any of such coal producing groups with respect to the rates to many of the Northern Illinois destinations involved.

I have also shown on such exhibit the name of each of the railroads that serves the fourteen representative points and the numerous destinations in Northern Illinois to which increases are proposed in the present rates from the Illinois, Indiana, and Western Kentucky mines by the rates under suspension in these proceedings. In addition, this exhibit shows the names of the railroads which participate as intermediate carriers in the rates and routes from the Illinois producing groups to the suspended and comparative points.

(Exhibit No. 22, Witness Rozene, received in evidence.)

By Mr. Stadell:

Q. Now, Mr. Rozene, what is the position of the Illinois Coal Traffic Bureau and the Central Illinois District Coal Traffic Bureau in these proceedings?

A. They are opposed to the approval or establishment of [fol. 1390] any of the proposed increased rates which are under suspension in these proceedings from the Illinois groups in which their members have mines, to the destinations involved in Northern Illinois. They are also opposed to the issuance of any 13th Section order, such as is requested by the railroads in these proceedings, which would require increases in the present intrastate rates from their member companies' mines to the Northern Illinois destinations involved.

Q. Will you please state the principal reasons for the position of these two parties?

A. In order that the reasons for the position assumed by us in these proceedings may be readily apparent, I desire to first briefly review the historical background of the present rates from the Illinois and Indiana mines to the destination territory involved and make a brief reference to previous decisions of the Illinois and Interstate Commerce Commissions in which such rates have been involved.

In Illinois Commerce Commission Docket No. 13558, Chamber of Commerce of Rockford vs. Baltimore & Ohio Railroad Company, et al, decided March 7, 1928, and Illinois Commerce Commission Docket No. 13569, Rockford Manufacturers and Shippers Association vs. Baltimore & Ohio

Railroad Company, et al, decided March 7, 1928, the Illinois Commerce Commission, upon complaint of the receivers and consumers of coal at Rockford, Freeport, and certain other Northern Illinois points, found that the rates then in effect [fol. 1391] on coal from Danville, Fulton County, Peoria, Springfield, Centralia, Belleville, Duquoin, and Southern Illinois groups to such points were unreasonable and it required such rates to be reduced 17 cents per ton for the purpose of placing them on a proper basis.

The prescribed reduced rates became effective August 20, 1930. Shortly thereafter, the railroads filed a petition with the Interstate Commerce Commission alleging that such reduced Illinois intrastate rates among others, discriminated against interstate commerce in coal from Indiana and Western Kentucky, and to interstate destinations beyond, and resulted in a revenue discrimination against interstate commerce, in violation of Section 13 of the Interstate Commerce Act. They requested the Commission to institute a 13th Section investigation with respect to such rates, and following such investigation to issue an order requiring them to be increased back to their former level.

Pursuant to the prayer of such petition, the Commission instituted a 13th Section investigation, and after an exhaustive investigation in such proceedings, Docket No. 23130, Intrastate Rates on Bituminous Coal Within Illinois, 182 ICC 537, it dismissed such petition because it found that the interstate rates voluntarily maintained by such railroads from the Indiana mines to the Northern Illinois points involved were below the level of the reduced intrastate rates which had been prescribed by the Illinois [fol. 1392] Commission from the Illinois mines to such destinations; that the transportation conditions from the Indiana mines, on the one hand, and the Illinois mines, on the other, to such destinations were substantially similar; that the principal competition met by the Illinois mines at such points was with the Indiana mines; and that in view of such findings it could not and would not require any increase in the intrastate rates from the Illinois mines to such Northern Illinois points, unless and until the lower level of rates from the Indiana mines to such points and to points in the surrounding territory was increased to a level more nearly commensurate with the level of the rates from the Illinois mines.

From what I have stated, it will be observed that the Commission in its decision in such case set up a positive condition which the railroads were required to meet and comply with before they could make any increases in the present intrastate rates on coal from the Illinois mines to the points in Northern Illinois involved in these proceedings, or before the Illinois or Interstate Commerce Commissions would or could approve any increases in such rates. However, the railroads have wholly failed to comply with this condition since the decision in such case. On the contrary, since such decision was rendered, the Chicago, Milwaukee, St. Paul and Pacific Railroad has reduced the rates on coal to Rockford and Freeport and certain intermediate points from all of the mines served by it in the [fol. 1393] Brazil-Clinton, Indiana, group, 17 cents per ton, and from all of the mines served by it in the Linton-Sullivan, Indiana, group, 12 cents per ton.

When such reduced rates were published they were suspended by the Interstate Commerce Commission in I&S Docket No. 3843, Coal from Indiana to Illinois, 197 ICC 245; 200 ICC 609, and were found to be unlawful and the Commission ordered them cancelled. The Commission's decision in such case, however, was set aside by the United States Supreme Court, on the ground that it was not supported by necessary findings, and the reduced rates from such Indiana mines to such Northern Illinois points became effective April 23, 1934, and have been in effect since that time.

As revealed by Witness Kuhls' testimony in these proceedings, Transcript 774, the great preponderance of the coal tonnage from the Brazil-Clinton and Linton-Sullivan, Indiana, groups originates at mines in such groups served by the Chicago, Milwaukee, St. Paul and Pacific Railroad.

Therefore, except for the Ex Parte No. 115 increase of 10 cents per ton, which was made in all of the rates on coal in this territory, the present rates to Rockford, Freeport, and the other intermediate Illinois points referred to from the mines served by the Milwaukee in the Brazil-Clinton, Indiana, group are 17 cents per ton lower, and the present rates from all mines in the Linton-Sullivan, [fol. 1394] Indiana, group served by the Milwaukee to such points are 12 cents per ton lower than the rates which were in effect from such mines to such points at the time of the hearing in Docket No. 23130.

The substantially higher basis of rates which were in effect from the Indiana mines at the time of the hearing in Docket 23130 was the one described by the Commission in its report in that case as being well below the level of the rates in effect from the Illinois mines and well below the level of the rates generally in effect on coal in this territory.

As the petitioning and respondent railroads have not only failed to comply with the positive condition laid down by the Commission in its decision in Docket No. 23130, with respect to increasing the rates from the Indiana mines, but on the contrary have further substantially reduced the level of such rates to the Northern Illinois points involved, it is our position that there is no justification, either in fact or in law, for the substantial increases which they are seeking authority in these proceedings to make effective in the present rates from the Illinois mines to such points, and that the Illinois and Interstate Commerce Commissions should find such proposed increases unjustified and unlawful, and the latter Commission should dismiss the pending 13th Section petition and discontinue these proceedings.

The failure of the railroads to comply with the condition laid down by the Commission in its decision in Docket No. [fol. 1395] 23130 with respect to increasing lower level of rates from the Indiana mines; the further substantial reductions which they have made in such rates to the Northern Illinois points involved since the Commission's decision in such case, and the voluntary maintenance by them of the present substantially lower level of rates from the Indiana mines to such points than from the Illinois mines constitutes the first principal reason for our opposition to the suspended increased rates from the Illinois mines and to the pending 13th Section petition.

It is our position that the issues presented with respect to the lawfulness of the present intrastate rates from the Illinois mines to the Northern Illinois points involved and with respect to the question of whether they violate the 13th Section of the Interstate Commerce Act, have already been thoroughly reviewed and decided against the respondent and petitioning railroads in Docket No. 23130, under conditions and facts more favorable to the railroads' side of the case than are the conditions and facts which are present in the present proceedings, that is, in Docket 23130, the rates from the principal mines in the Brazil-Clinton, Indi-

ana, group were 17 cents per ton higher and the rates from the principal mines in the Linton-Sullivan, Indiana, group were 12 cents per ton higher than they are at the present time.

From what I have stated, it is apparent that the only change in conditions which has occurred since the Com- [fol. 1396] mission's decision in Docket No. 23130, dismissing the railroads' 13th Section petition and refusing to approve or require increases in the intrastate rates from the Illinois mines to the Northern Illinois points involved, has been the further substantial reductions of 17 cents per ton in the rates from the Brazil-Clinton, Indiana, mines and 12 cents per ton in the rates from the principal mines in the Linton-Sullivan, Indiana, group to such points. It is therefore our position that the Interstate Commerce Commission's decision in these proceedings, with respect to the pending 13th Section petition, can properly be no different than it was in Docket No. 23130.

The only yardsticks or standards of comparison used by the railroads in these proceedings in their attempted justification of the proposed increased rates, which are under suspension, from the Illinois mines to the Northern Illinois points involved, are the present interstate rates from such mines to the comparative points which are located beyond in Northern Illinois, Eastern Iowa, and Southern Wisconsin, and the Holmes and Hallowell scale.

Mr. Zoll: Right there, are you sure that that is correct? I just want to call attention to the fact that one exhibit, No. 12, introduced by Mr. Kuhls, has other yardsticks in it. I just question the correctness of that statement. You might as well go ahead, but I just wanted the record to show that I doubt whether that is correct.

[fol. 1397] The Witness: The use of the interstate rates from the Illinois mines to the comparative points in Southern Wisconsin, which I will later show are unreasonably high and on an improper basis, by virtue of the order of the Interstate Commerce Commission in Lake Dock Coal Cases, 89 ICC 170, which we contend it never had any authority to enter in the first instance and which has since been vacated and set aside, and the use of the Holmes and Hallowell scale as a yardstick for measuring the proposed Illinois intrastate rates, is improper, because if the interstate rates from the Illinois mines to the comparative points in Wiscon-

sin were reduced to a proper basis they could not be used to justify any increases in the present intrastate rates from such mines to points in Northern Illinois.

Another reason why we are opposed to the approval or establishment of the proposed increased intrastate rates which are under suspension in these proceedings from the mines of our member companies to the Northern Illinois points involved and to the issuance of any 13th Section order requiring such rates to be increased, is that the railroads have in numerous instances established and used grossly circuitous routes in connection with such rates for their own convenience and the distances over such circuitous routes makes such rates appear much lower than they actually are if reasonable and practicable tariff routes were established and used in connection with such rates.

[fol. 1898] There are other important reasons why the Illinois and Interstate Commerce Commissions can not properly approve the increased rates which are under suspension in these proceedings from the Illinois mines of our member companies to the Northern Illinois points involved, and why the Interstate Commerce Commission cannot properly require such rates to be increased under the 13th Section, and these reasons will be more fully developed in my later testimony and exhibits and in our brief in these proceedings.

By Mr. Stadell:

Q. Have you prepared an exhibit showing the present and suspended rates from the Illinois, Indiana, and Western Kentucky mines to the representative suspended and representative comparative points and the comparative average level of the present and suspended rates from such mines to such points?

A. Yes. This information is shown in my Exhibit No. 23.

Q. Will you please explain what this exhibit shows, in so far as any explanation is necessary?

A. This exhibit consists of 29 pages. On pages 1 to 12, inclusive, I have shown the average short tariff route distances, the present suspended rates from each group in Illinois, Indiana and Western Kentucky to the representative suspended points, the ton mile earnings produced by such rates and average distances, and the percentage such rates are of the Midland scale and the 23922 scale. I have

[fol. 1399] also shown in this portion of such exhibit the average level of the present and suspended rates to each of the 12 representative suspended destinations from Western Kentucky and from the Illinois mines as well as from all of the Indiana mines as a whole.

On pages 13 to 29, inclusive, I have shown the same character of information with respect to the average short tariff route distances and the present rates from the Illinois, Indiana and Western Kentucky mines to the 14 representative comparative points.

(Exhibit No. 23, Witness Rozene, received in evidence.)

By Mr. McElroy:

Q. Just generally what does that exhibit indicate, that the Illinois intrastate rates are higher or lower than the general level of interstate rates?

A. I will come to that a little later on, Mr. Examiner.

Mr. McElroy: All right.

By Exam. Trezise:

Q. You do compare the short tariff route mileage with the shortest tariff route mileage.

A. I will also come to that later on. I am using the shortest tariff route in this instance.

Q. Except in making your comparison with the Midland scale, that was the short tariff route?

A. Yes, sir.

By Mr. Stadell:

Q. Where did you obtain the average short tariff route mileages and the present and suspended rates which you [fol. 1400] have used in this exhibit from the Illinois, Indiana, and Western Kentucky mines to the representative suspended and representative comparative points?

A. In order to completely avoid any controversy with respect to the average mileages which are used in this exhibit or with respect to the method used in computing such mileages, and in order to resolve every possible doubt in favor of the petitioning and respondent railroads' side of the case, we have used the average short tariff route mileages and the present and suspended rates which were presented by them in these proceedings in their Exhibits Nos.

3 and 4, except that from origin points in the Northern Illinois and Fulton County groups we have used the average short tariff route mileages which were computed by Mr. A. J. Christiansen, and which will be presented later by him in an exhibit as a part of his evidence in these proceedings.

Q. Why did you use the average short tariff route mileages computed by Mr. Christiansen rather than those computed by the railroads from the origins in the Northern Illinois and Fulton County districts to the points involved?

A. Because his exhibit was more clear and somewhat easier to check and to obtain the averages than that of the railroads. I might say, that the average mileages computed by him and used by me in this exhibit from origins in the Northern Illinois and Fulton County districts are substan- [fol. 1401] tially the same in every case as those contained in the railroads' exhibit from such origins to such points, so that it makes no difference whether his mileages or those of the railroads are used from such origins to such points.

By Exam. Trezise:

Q. May I just ask for my own guidance, that when you show a rate or a distance, say, from any one of these points in northern Illinois, did you take all of the rates from those points or did you just take what sometimes is referred to as the going rate?

A. I took all of the rates.

Q. Then you took all of the distances, too?

A. I took all of the rates and the distances that applies to each of those rates.

Q. And that could be then said to be the average of the distances from the points?

A. From the points taking those rates, yes, sir.

Mr. Boden: Might I ask a question for clarification, Mr. Examiner.

Exam. Trezise: All right.

By Mr. Boden:

Q. Just for clarification, on sheet 1, I notice Northern Illinois to Amboy, you show three rates. Will you explain what those three different rates are?

A. If you look at the carriers' exhibit, they are identically the same rates that are shown in the carriers' exhibit.

There are three different rates from Northern Illinois to Amboy.

[fol. 1402]. By Mr. Stadell:

Q. In other words, these three different rates apply from different origins in the Northern Illinois group to Amboy?

A. Yes, sir.

Q. And you have shown each of them?

A. Yes, sir.

Q. Just as you have in connection with the rates from every other group where there was a rate in connection with the origin group?

A. Yes, sir.

By Exam. Trezise:

Q. Now, where the rate is 10 or 15 or 25 cents higher over one route than over the other from the same origin point to a given destination, you took both of them, if such a thing is true?

A. That is right; if it is shown in the carriers' exhibit that way, I have taken it that way.

By Mr. Vesey:

Q. But as a matter of fact, Mr. Rozene, the rates you show from Northern Illinois, from Fulton-Peoria, are in effect the going rates?

A. I have shown the going rates in addition to any other rate, if they happen to have one.

By Mr. Stadell:

Q. You have shown all of the rates involved in this proceeding that the railroads are trying to increase?

A. Yes, sir.

Q. And you don't know of any other way that you could [fol. 1403] get an average level of the rates from any group of mines, do you?

A. No, unless I went to work and started to hand-pick them. For my own satisfaction, the only way I could be fair to everybody is to take them all.

Q. What is your next exhibit?

A. My next exhibit, which has been marked No. 24, is, in substance, a recapitulation of the information which is shown in my preceding exhibit, No. 23, with respect to the

comparative levels of the present and suspended rates from the Illinois, Indiana, and Western Kentucky mines to the 12 representative suspended Northern Illinois points, and with respect to the comparative levels of the present rates from such mines to the 14 representative comparative points.

(Exhibit No. 24, Witness Rozene, received in evidence.)

By Mr. Stadell:

Q. What is your next exhibit?

A. My next exhibit, which has been marked No. 25, is based upon the information that is contained in my two preceding exhibits, and shows the average level of the present and suspended rates from the Illinois mines, from the Indiana mines, from the Western Kentucky mines, from the Indiana and Western Kentucky mines combined, to the 12 representative suspended points and the average level of the present rates from such mines to the 14 representative comparative points, as measured by the ton mile earnings [fol. 1404] produced by such rates, and by the percentage that such rates are of the Midland Electric scale.

(Exhibit No. 25, Witness Rozene, received in evidence.)

By Mr. Stadell:

Q. Now, have you prepared a graphic chart portraying in graphic form the comparative average levels of the present and suspended rates from the Illinois mines, the Indiana mines, and the Western Kentucky mines to the 12 representative suspended points and the comparative average levels of the present rates from such mines to the 14 representatives comparative points, as measured by the ton mile earnings produced by such rates, and by the percentage that such rates are of the Midland Electric scale?

A. Yes, I have prepared such a chart and it has been marked as Exhibit No. 26.

Q. Will you please briefly explain this exhibit in so far as any explanation is necessary.

A. Columns B to E, inclusive, of this exhibit, show the comparative levels of the present and suspended intrastate rates from the Illinois mines to the 12 representative suspended Northern Illinois points, and the average level of the present and suspended interstate rates from the Indiana

and Western Kentucky mines to such points, as measured by the Midland Electric scale.

From Column B it will be observed that the present intrastate rates from the Illinois mines to the 12 representative [fol. 1405] Northern Illinois points average 79 per cent of the Midland scale, and that the suspended rates from such mines to such points average 82 per cent of such scale. Contrasted with this, columns C and D of such exhibit show that the present interstate rates from the Indiana and Western Kentucky mines to such Northern Illinois points average but 69 and 71 per cent, respectively, of that scale, while the suspended interstate rates from the Indiana and Western Kentucky mines to such points average but 72 and 73 per cent, respectively, of such scale, or a substantially lower percentage in each case than is reflected by either the present or suspended intrastate rates from the Illinois mines. Column E shows that the present interstate rates from the Indiana and Western Kentucky mines combined to the 12 representative Northern Illinois points average but 69 per cent of the Midland scale, while the suspended interstate rates from such mines to such points average but 72 per cent of such scale.

In other words, while the present interstate rates from the Indiana and Western Kentucky mines combined to these representative Northern Illinois points, and the suspended interstate rates from such mines to such points average but 69 and 72 per cent, respectively, of the Midland scale, the present and suspended intrastate rates from the Illinois mines to such points average 79 and 82 per cent, respectively, of such scale or 10 percentage points higher in each case.

[fol. 1406] In columns F to I, inclusive, of this exhibit, we have shown the average level of the present rates from the Illinois, Indiana, and Western Kentucky mines and from the Indiana and Western Kentucky mines combined, to the 14 representative comparative points.

I desire to call particular attention to the fact that as indicated in columns G and I of this exhibit, the present rates from the Indiana mines and from the Indiana and Western Kentucky mines, combined, to the 14 representative comparative points, average but 78 per cent of the Midland scale, while as is shown in Column B the present intrastate rates from the Illinois mines to the representa-

tive suspended Illinois points average 79 per cent of the scale.

In other words, if the present rates from the Indiana mines or from the Indiana and Western Kentucky mines to the representative comparative points are used as a yardstick for measuring the reasonableness and lawfulness of the present intrastate rates from the Illinois mines to the Northern Illinois territory involved in this proceeding; such intrastate ra s are shown to be on a proper and lawful level and in fact on a higher level than the present rates from the Indiana and Western Kentucky mines to such points.

A comparison of column B with columns C, D and E, and with columns G, H and I, clearly indicates that the suspended increased intrastate rates from the Illinois mines [fol. 1407] to the Northern Illinois points involved, which are under suspension in these proceedings, are on a considerably higher level than either present or suspended rates from the Indiana and Western Kentucky mines to such points, or the present rates from the Indiana and Western Kentucky mines to the representative comparative points.

As a matter of fact, as is shown in columns B, C, D and E, the present intrastate rates from the Illinois mines to the 12 representative suspended points are on a substantially higher level than are even the increased suspended rates from the Indiana or Western Kentucky mines to such points, the present intrastate rates from the Illinois mines to such points averaging 79 per cent of the Midland scale, and the proposed increased interstate rates from the Indiana mines and from the Indiana and Western Kentucky mines combined, to such points, averaging but 72 per cent of such scale, or 7 per centage points lower. There can obviously be no justification whatever for a higher level of rates on coal from the Illinois mines to points in Northern Illinois than from the Indiana and Western Kentucky mines, which are the principal competitors of the Illinois mines in such territory. Nor can there be any justification for a higher level of rates intrastate from the Illinois mines to the Northern Illinois territory involved in these proceedings than from the Indiana or Indiana and Western Kentucky mines to the comparative beyond.

In columns K to M of this exhibit, I have compared the [fol. 1408] average level of the present and suspended rates from the Illinois mines to the 12 representative suspended Northern Illinois points with the average level of the present and suspended interstate rates from the Indiana and Western Kentucky mines to such points, as measured by the ton-mile earnings produced by such rates. A mere glance at this portion of such exhibit clearly reveals the much higher level of both the present and suspended intrastate rates from the Illinois mines than of the present or suspended interstate rates from the Indiana and Western Kentucky mines.

Column K shows that the present intrastate rates from the Illinois mines to the representative suspended Northern Illinois points produce average ton-mile earnings of 9.7 mills, while the present interstate rates from the Indiana mines produce average ton-mile earnings of but 6.4 mills and the present rate from the Western Kentucky mines but 5.6 mills. While the present intrastate rates from the Illinois mines to the Northern Illinois points involved produce average ton-mile earnings of 9.7 mills, the proposed increased interstate rates from the Indiana mines produce average earnings of but 6.6 mills and the proposed increased interstate rates from the Western Kentucky mines produce average ton-mile earnings of but 5.9 mills. In other words, even if the proposed increases in the Illinois intrastate rates which are under suspension in these proceedings were disapproved and the increases which are [fol. 1409] proposed in the interstate rates from the Indiana and Western Kentucky mines to the representative suspended points were approved and established, the Illinois intrastate rates would still be on a substantially higher level than the interstate rates from the Indiana and Western Kentucky mines.

In columns O to R of this exhibit, I have shown the average ton-mile earnings produced by the present rates from the Illinois mines, the Indiana mines, the Western Kentucky mines and from the Indiana and Western Kentucky mines combined, to the 14 representative comparative points. Here again it will be observed that the average ton-mile earnings produced by the present intrastate rates from the Illinois mines to the representative Northern Illinois points, as shown in Column K, are about one-third

higher than the average ton-mile earnings that are produced by the present rates from the Indiana or Western Kentucky mines or from the Indiana and Western Kentucky mines combined.

As shown by columns K to R of this exhibit, if either the present or suspended rates from the Indiana and Western Kentucky mines to the suspended Northern Illinois points, or the present rates from the Indiana or Indiana and Western Kentucky mines to the representative comparative points, are used as a yardstick to measure the present intrastate rates from the Illinois mines to the Northern Illinois points involved, it will be found either that the present rates from the Illinois mines to such Northern [fol. 1410] Illinois points are excessively high or that the present and suspended rates from the Indiana and Western Kentucky mines to such points and the present rates from such mines to the representative comparative points are too low.

Exam. Trezise: I just want to inquire about the last statement there. You think what you have shown on this Exhibit 26 is an improper rate adjustment, is that the idea?

The Witness: No. I have shown here that the present Illinois intrastate rates are on a higher level than either the interstate from Western Kentucky or Indiana.

Exam. Trezise: Oh, yes, you include these interstate rates as well. What I had in mind was, and I think the Commission would want to know, if you took a number of short haul rates under the Midland scale and compared the percentages and compared them with longer hauls under the Midland scale, naturally you would get the variation. The average of the shorter hauls would show a greater percentage of the Midland scale than the longer hauls because the Midland scale decreases to some extent when it gets above the distances of these suspended rates within the state.

The Witness: Well, that is true, Mr. Examiner, but what I am trying to show here is a level of all of the rates in this territory.

Mr. Vesey: Just so I can follow that, doesn't the Examiner's question assume, of course, that the Midland scale is [fol. 1411] properly graded for the varying distances, or did the Examiner assume that?

Exam. Trezise: I am not assuming anything, but I am just trying to ask, isn't the result of your graph here the natural thing—wouldn't it be a proper thing to show, if you mixed up a lot of shorter hauls with the longer hauls and averaged them, you would have a greater percentage of the Midland scale than if you took the commensurate hauls or similar hauls?

The Witness: Well, they would vary between length of haul to some extent, but in these cases in the past that I have been in, they have used short hauls and long hauls and all kinds of hauls to show ton-mile earnings. That is what I am trying to show, what the condition is as it exists today.

Mr. McElroy: Whatever imperfections are shown by the Midland scale, would that be compensated for by reason of the showing for the ton-mile earnings?

The Witness: Yes.

Mr. McElroy: Assuming the Midland scale is improper.

The Witness: Yes.

Mr. McElroy: Would the ton-mile earnings shown on this exhibit be proper?

The Witness: Yes, they would.

Exam. Trezise: The point I make is you can't compare short hauls with long hauls, and if you put short hauls in with long hauls and average them up you are going to [fol. 1412] have a greater percentage on your Illinois relationship to the Midland scale than if you took distances from Indiana to those destinations which are longer and naturally would be relatively lower. You think out a nice answer to help the Commission before we get through on this.

The Witness: I think that will be very clearly stated before we are through.

Exam. Trezise: Thank you.

By Mr. Stadell:

Q. Upon what average mileages is the data shown in your graphic chart Exhibit No. 26 based?

A. The average short tariff mileages which were presented by the railroads in their exhibits 3 and 4 in this proceeding and from origins in the Northern Illinois and Fulton-Peoria districts, the average short tariff route mileages which were computed and will be presented by Mr.

A. J. Christiansen in an exhibit in these proceedings. As I previously stated, those were the average mileages that I used in my three preceding Exhibits Nos. 23, 24 and 25, and this graphic chart simply presents in picture form the data that is shown in those exhibits.

(Exhibit No. 26, Witness Rozene, received in evidence.)

By Mr. Stadell:

Q. Have you computed the average distances from the Illinois and Indiana mines to the representative suspended and representative comparative points, and if so, what [fol. 1413] method did you use for the computation of such average mileages?

A. Yes, in accordance with the agreement reached between the parties at the prehearing conference which was held in these proceedings last November, I have computed the average mileages over the shortest tariff routes from all of the mines in the various Illinois groups and from all of the mines in the various Indiana groups to the 12 representative suspended and to the 14 representative comparative points. These average shortest tariff route mileages and the present rates from each of the Illinois mines and groups to the representative suspended and representative comparative points are contained in my Exhibit No. 27, while the average shortest tariff route mileages and the present rates from each of the Indiana groups to such points are shown in my Exhibit No. 28.

Q. What is the difference between the method used by you in computing the average shortest tariff route distances from the Illinois and Indiana mines to the representative suspended and representative comparative points and the method used by the railroads in computing their average distances over the short tariff routes from such mines to such points?

A. Many of the mines and tariff origin points in the Southern Illinois and some of the other Illinois groups are served by more than one railroad, while the mines or tariff origin points in the various Indiana groups are generally [fol. 1414] served by but one railroad. For example, reference to line 43, page 1, of my Exhibit No. 27, shows that the Royalton-Energy mine in the Southern Illinois group is served by three railroads, namely, the Chicago, Burlington & Quincy, the Illinois Central, and Missouri Pacific

Railroads. Although this mine and various others in that group are served by two, three, or four railroads in some cases, it is our position that there can be but one short tariff route from each of such mines or origins to a given destination, such as Rockford, Illinois, for example.

In computing their average short tariff route distances, however, the railroads have used the distance over the tariff route of each of the railroads which serve these mines or tariff origins to the representative suspended and representative comparative points. This results in the use of a duplication of routes and in an inflated average mileage. It also results, for all practical purposes, in computing mileages from the Southern Illinois and the other Illinois mines which are served by more than one railroad by a different method than the method which they used in computing the average short tariff route mileages from the Indiana mines, because from those mines distances are used in virtually every case over but one short tariff route from each mine or tariff origin point to each of the representative suspended and representative comparative points. Therefore, in the computation of our average shortest tariff route [fol. 1415] distances from the Southern Illinois and other Illinois mines, as well as from the Indiana mines to the representative suspended and comparative points, which are shown in my exhibits Nos. 27 and 28, I have used the distance from each of such mines or the tariff origin points in each of the Illinois and Indiana groups but once, that is, via the origin carrier having the short tariff route to such point.

In several recent cases the Interstate Commerce Commission has refused to use average distances computed over the short tariff routes by the method used by the railroads in their exhibits in these proceedings, and used instead the average distance over the shortest tariff routes computed under the method which I have used in my exhibits Nos. 27 and 28. Among these cases are Midland Electric Coal Corporation vs. Chicago & North Western Railway Company, et al., 225 ICC 349; 232 ICC 5, in which the rates from and differentials between all of the Illinois groups to all destinations in Iowa were involved; Traffic Bureau of Sioux Falls Chamber of Commerce vs. Chicago, Milwaukee, St. Paul & Pacific Railroad Company, et al., 251 ICC 241, involving the rates from all mines in Illinois, Indiana and Western Kentucky, to destinations in South

Dakota, and Fairbanks-Morse & Company, et al., vs. Alton & Southern Railway Company, et al., 251 ICC 181, which involved the rates on coal from all mines in Illinois, Indiana, and Western Kentucky to Beloit, Janesville, Ft. Atkinson, and Lake Mills, Wisconsin.

[fol. 1416] We believe that the average shortest tariff route distances present a much fairer picture of the average distances from the Illinois mines, on the one hand, and the Indiana mines on the other, than do the average short tariff route distances which are contained in the railroads' exhibits in these proceedings, because under the latter method of computing the average distances the Illinois and Indiana mines are not accorded like for like treatment, but the Indiana mines are accorded a substantial preference by having their mileages computed by the use of but one tariff route from each origin point or mine, while the average mileages from the Southern Illinois and some of the other Illinois mines which are served by more than one railroad, are considerably inflated because they are computed by the use of the mileages over as many as three or four routes from many of the individual mines or tariff origin points which represent them.

Q. Will you now please take up and explain your Exhibit No. 27, in so far as it needs any explanation?

A. I have shown on the title page of this exhibit an index to all of the data which it contains.

On page 1, I have shown the name of each mine or tariff origin point in the Southern Illinois group, the name of the railroad serving each of such mines or tariff origin points, the present rates, and the shortest tariff route mileage from each of such mines or origin points to Amboy [fol. 1417] and Belvidere, two of the representative suspended points, reference to the route over which such mileage applies, and the average mileage from all of the mines or tariff origin points in such group to the two destinations named.

On pages 2 to 6, inclusive, I have shown the shortest tariff route mileage and present rate from each of the mines or tariff origin points in the Southern Illinois group to the other representative suspended Northern Illinois points, and to the 14 representative comparative points, and at the bottom of each of such pages the average mileages from all of the mines or tariff origin points in such group to each of such representative points as shown.

Similar information is shown for the mines and tariff origin points in the Springfield, Illinois, group on pages 7 to 12, inclusive, of this exhibit. Pages 13 to 18, inclusive, contain the same information with respect to the rates and average mileages from the mines and tariff origin points in the Belleville, Illinois, group to the representative suspended and comparative points. On pages 19 to 24, inclusive, I have shown the same information with respect to the present rates and average mileages from all of the mines or tariff origin points in the Danville, Centralia, and DuQuoin, Illinois, groups to the representative suspended and comparative points.

On pages 25 to 28, inclusive, I have shown the distances over the shortest tariff routes and the present and sus- [fol. 1418] pended rates from the mines at Alpha, Atkinson, Victoria, and Rushville, Illinois, to the representative suspended and representative comparative points, and the average shortest tariff route mileage and average present and suspended rate from each of such mines to all of the 12 representative suspended and to all of the 14 representative comparative points.

Page 29 contains the same information with respect to the average shortest tariff route mileages and the present and suspended rates from the Northern Illinois group to the representative suspended and comparative points.

Page 30 of this exhibit shows the average shortest tariff route distance and the present and suspended rates from the Fulton-Peoria group to such representative points and the average shortest tariff route distance and present and suspended rates from such group to all of the representative suspended and all of the representative comparative points.

The average shortest tariff route mileage and the average of the present and suspended rates from the Southern Illinois, Springfield, Illinois, Belleville, Danville, Centralia, and DuQuoin, Illinois, groups are shown on pages 31 to 36 of such exhibit.

Page 37 contains a recapitulation and shows the average shortest tariff route distance, the average present and average suspended rate from all of the Illinois groups and mines to the 12 representative suspended points and the [fol. 1419] average shortest tariff route distance and the average present rate from all of such groups and mines to the 14 representative comparative points.

Pages 38 to 42 contain an explanation of the shortest tariff routes over which the average mileages contained in such exhibit were computed, and page 43 shows the tariff authority for the rates and distances used in such exhibit.

Exam. Trezise: We will have a few minutes' recess.

(A recess was taken.)

Exam. Trezise: All right, gentlemen, let us continue.

By Mr. Stadell:

Q. In the heading on pages 25 to 30, inclusive, of your Exhibit No. 27, you indicate that the rates and distances were taken from an exhibit of Mr. Christiansen. That is an exhibit that you referred to that will be introduced later in the case by him?

A. Yes, sir.

Q. Of what significance are the words which appear in line 15 on page 31, of Exhibit No. 27 as illustrative, "except Belvidere", which are followed by figures showing total miles and average shortest tariff route mileage and average present and suspended rate from the Southern Illinois group to the 12 representative suspended points?

A. While, as I will show later on in my testimony and exhibits, many of the short tariff or shortest tariff routes from the Southern Illinois mines to the representative sus- [fol. 1420] pended points are extremely circuitous, and therefore reflect greatly inflated distances as compared with the distances which would apply in connection with practical or reasonable short tariff routes from such mines to such points, I thought it advisable in view of the extreme circuity involved in the short tariff and shortest tariff routes to Belvidere to show the picture with respect to that destination separately in this exhibit.

While you will note that I have shown in line 2 on page 31 of my Exhibit No. 27 the average shortest tariff route distance from the Southern Illinois group to Belvidere, Illinois, and this mileage has been used in securing the average shortest tariff route distance from that group to all 12 of the representative suspended points, I have also shown in line 15 that if the average shortest tariff route distance to Belvidere were excluded the average shortest tariff route distance from the Southern Illinois group to

the other representative suspended points would be reduced 7 miles.

On pages 25 to 37, inclusive, of this exhibit I have shown the average shortest tariff route distance from each of the Illinois groups or individual mines, where such mines are not included within any group, to the 12 representative suspended points in two ways, first, including the average shortest tariff route mileage from such groups or mines to Belvidere, and second, excluding the average shortest tariff route mileage from such group or mines to that point. [fol. 1421] In order to clearly demonstrate the inflation in the average short tariff and average shortest tariff route mileage which results from the use of the excessively circuitous short tariff and shortest tariff routes from the Southern Illinois group to the representative suspended points, and the extreme unfairness of attempting to measure the lawfulness of the present or suspended rates from that group to such points by the use of such mileage, I would like to direct your attention to the relative geographical location of Belvidere, Illinois, on the one hand, and Madison, Wisconsin, on the other on my map Exhibit No. 20.

From this map it will be found that Belvidere is located geographically approximately 75 miles nearer the Southern Illinois group than is Madison, Wisconsin. Notwithstanding the fact, however, that Belvidere is geographically about 75 miles nearer the Southern Illinois mines than is Madison, Wisconsin, it will be noted from pages 4 and 64 of the railroads' Exhibit No. 4 in these proceedings that the average short tariff route mileage from that group to Madison, Wisconsin, is 420 miles, and to Belvidere 437.4 miles, or 17.4 miles greater than to Madison. As shown on page 31 of my Exhibit No. 27, the average shortest tariff route mileage from the Southern Illinois group to Madison is 423 miles and to Belvidere 428 miles or 5 miles greater. In other words, the railroads, by using the extremely circuitous short tariff routes from the Southern Illinois group to Belvidere, as illustrative, and the greatly inflated distances [fol. 1422] produced by the use of such circuitous routes in measuring the lawfulness of the present and suspended rates from that group to that point, are asking the Commission to close its eyes to the actual geographical location of Belvidere and to treat that point as if it were actually located 17.4 miles north of Madison, Wisconsin, instead of about 75 miles south of that point.

Substantially the same would be true if the average distances over the shortest tariff routes were used in measuring the level or lawfulness of the present rates from the Southern Illinois group to the representative suspended points, or the relative level of such rates with those from the Indiana mines to such points, as the average shortest tariff route distance from the Southern Illinois group to Belvidere is, as I previously pointed out, 5 miles greater than to Madison, Wisconsin. It is our view that the only way the rates from the Southern Illinois group to the representative suspended points can be properly measured in their relation to the rates of Madison and other comparative points beyond, or in relation to the rates from the Indiana groups or some of the other Illinois groups from which the short tariff routes to the representative suspended points are not circuitous, is by the use of average distances over short circuit routes, that is, the average distances from each group to each of such points computed in accordance with the formula prescribed by the Commission in the General Class [fol. 1423] Rate Cases, Dockets Nos. 17000, part 2 and 15879.

Mr. McElroy: What is 15879?

Mr. Bather: That is the Eastern Class Rate Investigation.

By Mr. Stadell:

Q. Now, what mileages did the Commission use in the previous Illinois 13th Section case, Docket 23130?

A. They made what is usually referred to as a short rate making mileage, that is, the shortest mileage from a given particular group or certain mines in the group.

Q. That is the mileage over what they referred to as the rate making line from each group to the destination involved?

A. Yes, sir.

Exam. Trezise: That was the shortest tariff route, wasn't it?

Mr. Stadell: No.

Exam. Trezise: It was not the shortest tariff route for the short hauls? We prescribed some short hauls in there, or were you not talking about those?

Mr. Wilkinson: Well, just a minute. In making that answer, Mr. Rozene, are you sure they did that from all groups?

The Witness: I think they did that from—in setting up their report they used the short tariff rate making line.

Mr. Wilkinson: Didn't you——

Mr. Stadell: Is this cross examination?

Mr. Wilkinson: Yes, on this.

Mr. Stadell: I object to being interrupted on my direct. [fol. 1424] You can reserve your questions for cross examination.

Mr. Wilkinson: All right.

Mr. Stadell: If you want to ask a question to clarify anything on the exhibits, that is all right.

Mr. Wilkinson: Then I move, Mr. Examiner, that the witness' reference to what the Commission used in its report in Docket 23130 be stricken as the report will speak for itself.

Mr. McElroy: Note the objection.

Exam. Trezise: Now, in applying the foregoing each distance should be computed over the shortest tariff routes. Now, you say that isn't so. I am reading from the report.

Mr. Wilkinson: In 23130?

Exam. Trezise: 23130, yes. Now, you say that isn't the fact. I am talking about the short hauls. I just asked you about the short hauls.

The Witness: Where you prescribed a scale, you didn't do that; you prescribed a scale for certain mileages.

Mr. Wilkinson: Off the record, Mr. Examiner.

Exam. Trezise: All right, off the record.

(Discussion outside the record.)

Exam. Trezise: Go ahead.

By Mr. Stadell:

Q. Will you now please take up and explain your Exhibit No. 23 showing the average shortest tariff route mileage and present suspended rates to the representative suspended points and the average shortest tariff route mile- [fol. 1425] ages and present rates to the representative comparative points from the Indiana mines.

A. This exhibit is identical in construction with my preceding exhibit. It shows the names of the mines and tariff

origin points in each of the Indiana groups; the name of the railroad serving each of such mines or origin points; the average mileage over the shortest tariff route from each of such mines or origin points to each of the 12 representative suspended points; an explanation of the routes over which such mileages apply, and the present and suspended rates from all of the origin points or mines in such groups to such points, as well as the average shortest tariff route mileage from all of the origin points or mines in each of such groups and the present rates to each of the 14 representative comparative points.

Q. Now, right at this point I would like to ask you if the average shortest tariff route mileages that are shown in your Exhibits Nos. 27 and 28 from the Illinois and Indiana mines to the suspended and comparative points were computed in accordance with the formula laid down and followed by the Commission in the Midland Electric Coal case?

A. Yes, they were, with possibly one exception, and that is that if we had, say, two rates from one particular origin point, we took the lowest rate and figured the mileage that applied to that lowest rate. As I have indicated on my Exhibit No. 27, I say the distances via the shortest tariff routes [fol. 1426] over which the going rate applies. Now, there may be some instances where the rate is higher. I might explain that further by referring you to page 3 of my Exhibit No. 27. In columns B and C I show the distance from Southern Illinois to Geneva, Illinois, and I show the rate as being $2.00. Now, the footnote at the bottom of the page indicates that the rate from I. C. mines is $2.17 via I. C., Matteson, EJ&E, West Chicago, C&NW, and that the distance is 335 miles. By the use of this route the average distance would be as shown in line 58, instead of 382, it would be 365 miles.

Now, that comes about in this way; that the Illinois Central maintains a rate of $2.00 from Southern Illinois to Geneva via the Illinois Central, South Pekin, Illinois, and C&NW, and we have used that long mileage in computing this exhibit because it carries the lowest rate. However, they have a much shorter route at a higher rate. So we were compelled to use the going rate in all instances.

Exam. Trezise: Did you do that to Indiana, too?

The Witness: Yes, sir. I showed the mileage with the going rate in all instances.

Exam. Trezise: Well, going——

The Witness: That means the lowest rate.

Exam. Trezise: The lower of two rates, if there are two rates?

The Witness: That is right. In this case, as I pointed [fol. 1427] out, there are two rates.

Exam. Trezise: I was just raising the question of the going rate.

The Witness: Well, it is generally referred to as the going rate—the lowest rate as the going rate.

Exam. Trezise: Well, in coal business not necessarily, that isn't true, is it?

The Witness: Well, we always refer to the lowest rate as the going rate.

Exam. Trezise: Well, the coal moves on a higher rate?

The Witness: Take from Mauren mine to Geneva, I don't think any coal will move on $2.17 when there is a $2.00 rate to the same destination.

Mr. Stadell: From the same mine?

The Witness: From the same mine to the same destination.

Exam. Trezise: From the identical mine, I see.

Mr. Stadell: Yes.

Exam. Trezise: But you wouldn't say that from Indiana where a lower rate applies from a mine in the group than from another mine in the group, of course, you wouldn't include that?

The Witness: Well, if you are taking two different mines——

Exam. Trezise: Two different mines in the same group.

The Witness: That is different. I thought there might be something in the coal price that would take care of that.

By Mr. Stadell:

Q. And you computed these mileages from all origins or [fol. 1428] mines named in the railroads' tariffs?

A. Yes, sir.

Exam. Trezise: We will adjourn until ten o'clock tomorrow morning.

(At 4:30 p. m., September 23, 1943, adjourned to 10:00 a. m. September 24, 1943.)

[fol. 1429]

Morrison Hotel,
Chicago, Illinois,
September 24, 1943.

The hearing was resumed pursuant to adjournment, at 10:00 o'clock, a. m.

Before: R. N. Trezise, Examiner, F. B. McElroy, Illinois Commerce Commission

Appearances: As heretofore noted.

PROCEEDINGS

Exam. Trezise: All right, gentlemen, when you are ready, let us continue.

HARRY A. ROZENE resumed:

Direct examination (Continued).

By Mr. Stadell:

Q. I don't know, Mr. Rozene, whether the record is entirely clear on the method which you stated that you used in computing the average shortest tariff route distances from the Illinois and Indiana groups to the representative suspended and representative comparative points, because you made some reference to the fact that you had used the shortest tariff route mileage from the origin or mine having the going rate. Now, do you mean by that, that you used the average shortest tariff route mileage from every origin and every mine in each of the groups to each of the sus-
[fol. 1430] pended and comparative points where there was but one rate from that origin or mine?

A. That is right.

Q. And where there were two rates, one higher and one lower, from the same identical origin or mine, then you computed the distance over the route over which the lower of the two rates applied?

A. That is correct, yes, sir.

Q. But where you found that there were differing rates from different origins or mines in the same group, you took the mileage from each of those origins over the routes over which those differing rates applied?

A. Yes, sir.

Exam. Trezise: And you are now talking about your Exhibits 27 and 28?

Mr. Stadell: Yes.

Mr. Wilkinson: May I ask one question there, Mr. Stadell?

Mr. Stadell: Yes.

By Mr. Wilkinson:

Q. If you had a mine served by two carriers and each of those carriers had different rates, different routes, did you use both rates and routes?

A. If the rate was the same?

Q. No, if the rate differed.

A. I used the lower rate. I wouldn't use it twice. I would only use that point once and I would use the lower rate.

[fol. 1431] Exam. Trezise: If it was the identical mine?

The Witness: That is correct, yes, sir.

Exam. Trezise: But if it was a different mine with a different rate in the same group, you showed them both?

The Witness: Yes, sir.

By Mr. Stadell:

Q. And you did the same both from the Indiana and the Illinois groups?

A. Yes, sir.

Q. In your Exhibits 27 and 28?

A. Yes, sir.

Q. Now, in connection with the average mileages over the shortest tariff route shown in your Exhibit No. 28 from the Indiana groups, have you shown the average from each of those groups to the representative suspended points, including the mileage to Belvidere, and excluding the mileage to Belvidere, as you did in the case of the average shortest tariff route mileages from the Southern Illinois and other Illinois groups in your preceding exhibit?

A. Yes, in precisely the same manner. As indicated on page 19 of my Exhibit No. 28, you will note that I have shown the average shortest tariff route mileage from the Princeton-Ayrshire group, as illustrative, to all of the representative suspended points, including Belvidere, and in line 24 I have shown the average shortest tariff route

mileage from that group to all such points, including Belvidere. As I previously stated, the average shortest tariff

[fol. 1432] route mileage from the Southern Illinois group to these representative suspended points was reduced 7 miles by the exclusion of the mileage to Belvidere, however as shown in line 24, page 19, of my Exhibit No. 28, the average shortest tariff route mileage from the Princeton-Ayrshire group to the representative suspended points is identically the same, namely, 358 miles, whether the average shortest tariff route mileage from that group to Belvidere is included or excluded.

As I previously stated, the average short tariff route mileage from the Southern Illinois group to Belvidere is 17.4 miles greater and the average shortest tariff route mileage from that group to that point is 5 miles greater than to Madison, Wisconsin, which from a geographical standpoint is approximately 75 miles further north. As shown on page 19 of my Exhibit No. 28, however, the average shortest tariff route mileage from the Princeton-Ayrshire group to Belvidere over the routes over which the going rate applies is 63 miles shorter than the average shortest tariff route mileage from that group to Madison.

(Exhibits 27 and 28, Witness Rozene, received in evidence.)

Q. Have you prepared an exhibit showing the comparative average levels of the present and suspended rates from the Illinois mines, on the one hand, and the Indiana mines on the other, to the representative suspended points, and the average levels of the present rates from such mines to the representative comparative points based upon the average [fol. 1433] mileages over the shortest tariff routes which are contained in your Exhibits Nos. 27 and 28?

A. Yes. My Exhibit No. 29 presents such a comparison. Pages 1 to 6, inclusive, of this exhibit, show the names of each of the Illinois and Indiana groups, the present and suspended rates, and the average shortest tariff route mileage from each of such groups to each of the 12 representative suspended points, as well as the ton-mile earnings which are produced by such rates and average mileages, and the percentage that such rates are of the Midland Electric scale.

I have also shown the average present and suspended rates and the average shortest tariff route mileages from the Illinois groups and mines as a whole, and from the Indiana groups and mines as a whole, to each of the representative suspended points, as well as the ton-mile earnings that are produced by such average rates and mileages, and the percentage that the rates from the Illinois groups and mines as a whole, and the Indiana groups and mines as a whole, to each of such destinations is of the Midland scale.

On pages 7 to 13, inclusive, I have shown the same character of information with respect to the present rates, the average shortest tariff route mileage, the ton-mile earnings that are produced by such rates and average mileages, and the percentage that such rates are of the Midland scale from each of the Illinois and Indiana groups to each of the [fol. 1434] 14 representative comparative points.

Page 14 of this exhibit contains a summary of all of the data that *is* shown in the preceding 13 pages of such exhibit. On this page I have shown the average level of the rates from the Illinois mines as a whole to all of the representative suspended and to all of the representative comparative points in comparison with the average level of the rates from the Indiana mines as a whole to all of the representative suspended and representative comparative points, using the ton-mile earnings produced by such rates and the Midland scale as yardsticks.

Pages 15 and 16 of my Exhibit No. 29 are graphic charts upon which I have portrayed in graphic form the information shown in the preceding pages of such exhibit with respect to the comparative average levels of the present and suspended rates from the Illinois mines, on the one hand, and the Indiana mines on the other, to the representative suspended and representative comparative points, as measured by the ton-mile earnings produced by such rates and by the percentage that such rates are of the Midland scale.

The graphic chart on page 15 of this exhibit shows that the present rates from the Indiana mines to the 12 representative suspended points produce average earnings of but 6.4 mills per ton mile, while the present rates from the Illinois mines produce average earnings of 10 mills per ton mile, or 3.6 mills per ton mile, or 56 per cent higher [fol. 1435] earnings than are produced by the present rates from the Indiana mines to such points. The increased

suspended rates from the Indiana mines to the representative suspended points produce average earnings of but 6.7 mills per ton mile, while the suspended rates from the Illinois mines to such points produce average ton mile earnings of 10.4 mills or 3.7 mills per ton mile or 55 per cent higher average earnings.

I desire to direct particular attention to the comparison shown on page 15 of this exhibit between the ton mile earnings of but 7 mills produced by the present rates from the Indiana mines to the 14 representative comparative points, as compared with the average earnings of 10 mills per ton mile produced by the present intrastate rates from the Illinois mines to the 12 representative suspended Illinois points. In other words, when measured either by the present or suspended rates from the Indiana mines to the representative suspended points or by the present rates from the Indiana mines to the representative comparative points, the present intrastate rates from the Illinois mines to the Northern Illinois points involved are shown to be unreasonably high, or the rates from the Indiana mines are shown to be too low.

Page 16 of my Exhibit No. 29 shows the comparative average levels of the present and suspended rates from the Illinois and Indiana mines to the representative suspended points and of the present rates from such mines to the [fol. 1436] representative comparative points, as measured by the Midland scale. While the present rates from the Illinois mines to the representative suspended points average 80 per cent of that scale, the present rates from the Indiana mines average but 69 per cent and the suspended increased rates from the Indiana mines to such points average but 72 per cent or 11 and 8 percentage points lower than the present intrastate rates from the Illinois mines.

The present rates from the Illinois mines to the representative suspended points are the same percentage of the Midland scale, that is 80 per cent, as are the present rates from the Indiana mines to the representative comparative points, so that if the latter rates are used as a yardstick for measuring the present intrastate rates from the Illinois mines to the suspended points, no increase can be justified in such rates.

By Exam. Trezise:

Q. Mr. Rozene, your shortest tariff routes as you have described them are not the type of shortest tariff routes as indicated in the carriers' Exhibit 4, Section 3, where the statement is made, showing distances by shortest and longest of the short tariff routes?

A. They are not the same, no, sir.

Q. And your shortest tariff routes are as an average, as you have described them?

A. That is correct.

[fol. 1437] Q. And those averages are even higher than these so-called shortest tariff routes shown in Section 3 to this Exhibit 4?

A. Yes, sir, they are.

Q. Did you figure out what kind of distances these were in this Exhibit 4?

A. You are talking about the shortest tariff routes they show in there?

Q. Shortest, yes.

A. Yesterday, the question came up about the short rate making line and I believe those are the distances over the so-called short rate making line.

By Mr. Stadell:

Q. From each of the groups in Illinois, Indiana and Western Kentucky?

A. Yes.

Q. The exhibit you refer to is the railroads' Exhibit No. 4?

A. Yes.

Exam. Trezise: I was just wondering about that, because I casually sat down and picked the nearest point to Chicago, whether there was a mine or no mine, in the Southern Illinois Group, and I found it wasn't very far off from the distance that was shown in Exhibit 4. I don't know that that would be true in all respects, but I am just mentioning that so there may be no misunderstanding as to what that shortest tariff route is in comparison with your shortest tariff route.

The Witness: Mine are the average of the shortest tariff [fol. 1438] routes.

Exam. Trezise: Yours are the average, all right.

By Mr. Stadell:

Q. Why did you not include the comparative average level of the present and suspended rates from the Western Kentucky mines to the representative suspended points and of the present rates from such mines to the representative comparative points based upon the average shortest tariff route distances in the graphic charts contained in pages 15 and 16 of your Exhibit No. 29, in view of the fact that you show the average level of the present suspended rates to such points based upon the use of the average short tariff route distances in your previous graphic chart, Exhibit No. 26?

A. Because the tariff origin points and mines in the Western Kentucky group are with one or two exceptions served by but one railroad. Therefore, the average distances over the shortest tariff routes from that group to the representative suspended and representative comparative points are the same as the average distances over the short tariff routes from such group to such points. In order to avoid duplication, I have not shown the average shortest tariff route distances from the Western Kentucky group to such points in my Exhibits Nos. 27, 28 and 29, as they would be the same as the average short tariff route distances from that group to such points which are contained in the railroads' Exhibits Nos. 3 and 4 and in my Exhibit No. 23. For the same reason I have not shown the [fol. 1439] average levels of the present and suspended rates from the Western Kentucky group to the representative suspended points or the average levels of the present rates from that group to the representative comparative points, based upon the shortest tariff route distances in the graphic charts that are contained in pages 15 and 16 of my Exhibit No. 29, as that would be but a duplication of the information which is shown in my graphic chart, Exhibit No. 26, from the Western Kentucky group to such points, based upon the average short tariff route distances from such group to such points. As indicated by that exhibit, the average level of the present and suspended rates from the Western Kentucky mines to the representative suspended points and the average level of the present rates from such mines to the representative comparative points are considerably lower than the average level of the

present intrastate rates from the Illinois mines to the representative suspended Northern Illinois points.

(Exhibit No. 29, Witness Rozene, received in evidence.)

By Mr. Stadell:

Q. Now, Mr. Rozene, earlier in your testimony you made reference to the fact that the average short tariff route distances from the Southern Illinois group to Belvidere, Illinois, is actually 17.4 miles longer than to Madison, Wisconsin, although Belvidere is located about 75 miles nearer the Southern Illinois group, geographically speaking, than Madison. Is Belvidere the only one of the repre- [fol. 1440] sentative suspended points to which these circuitous short tariff and shortest tariff routes apply from the Southern Illinois group, or do they apply in connection with the rates from that group to the other representative suspended Northern Illinois points?

A. Such circuitous short tariff and shortest tariff routes are in effect quite generally from the Southern Illinois group to the Northern Illinois points involved in these proceedings. They were established and are maintained for the convenience of the railroads which comprise them. We have no objection to the railroads hauling the coal from the mines of our member companies to these points over these circuitous routes if they desire to, but we strenuously object to our rates being measured by the inflated distances over such routes because, as I pointed out in connection with the situation at Belvidere versus Madison, this results in rates to Belvidere that are based on about 92.4 miles more transportation service than are the rates to Madison, notwithstanding the fact that, geographically speaking, Belvidere is so much closer to such mines than is Madison that its consumers should be entitled to rates from the Southern Illinois group that are based upon 75 miles less transportation service, at least, than the consumers of the same coal at Madison.

Q. Have you prepared an exhibit containing a series of maps upon which you have shown, by means of colored lines, the location of some of the present circuitous short [fol. 1441] tariff or shortest tariff routes from mines in the Southern Illinois group to some of the representative suspended points, and the reasonable and practicable short

tariff routes or shortest tariff routes which could be established from such mines to such points by the railroads.

A. I have prepared such an exhibit, and it has been marked Exhibit No. 30. This exhibit consists of 18 maps. On each of these maps I have shown, by means of a solid red line extending from the mines or origin points on the railroad indicated in the Southern Illinois group to one or more of the representative suspended, the location of the present circuitous short tariff or shortest tariff routes from such mines or origins to such points. I have also shown on each of such maps, by means of a combination red and blue line; the location of what are in our opinion the reasonable or practicable short tariff or shortest tariff routes between such mines or origins and the representative suspended points indicated on such map.

As illustrative, page 1 of this exhibit shows, by means of a solid red line, the present extremely circuitous short tariff route which is also the shortest tariff route, from mines in the Southern Illinois group located on the New York Central Railroad to Belvidere, Illinois. This route applies via the New York Central through Danville to Peoria, and thence via the Chicago and North Western from Peoria to Belvidere. The distance via this route from such mines to Belvidere is 521 miles. A reasonable [fol. 1442] and practicable short tariff route or shortest tariff route could be established from such mines to such points via the New York Central through Danville to Gibson, Indiana, thence Indiana Harbor Belt to Proviso Yard, and the Chicago and North Western, as indicated by the combination red, blue and red line on this map. As a matter of fact, at the present time the route for coal originating at mines in Indiana on the New York Central and destined to Belvidere and the other Northern Illinois points is via the New York Central, Indiana Harbor Belt to Proviso Yard, and thence Chicago and North Western, or the same route that we have suggested from the Southern Illinois group. The distance from the Southern Illinois mines on the New York Central to Belvidere over the practicable reasonable short tariff route shown on this map is 393 miles, or 128 miles less than the distance of 521 miles over the present circuitous short tariff route from such mines to such point.

The map on page 2 of my Exhibit No. 30, shows, by means of the solid red line, the present short and shortest tariff

route from mines on the New York Central in the Southern Illinois group to Freeport, Polo, Dixon, and Amboy, Illinois. This route applies via the New York Central through Danville and Bloomington, thence via the Illinois Central from Bloomington to the four representative suspended points named. A reasonable and practicable short tariff [fol. 1443] route from these mines to such points could be established via the New York Central to Grayville, Illinois, thence the Illinois Central, as indicated by the combination red, blue and red line shown on this map. The distance via the present route is 41 miles greater to each of the four destinations named than over the reasonable and practicable short tariff route which I have indicated, or a total excess distance of 164 miles from such mines to these four representative suspended points.

On the map, page 3 of such exhibit, I have shown, by means of the solid red line, the present short, which is also the shortest, tariff route from mines on the New York Central to Byron, Illinois, and from such mines to Rochelle, Illinois, and by means of the combination red, blue and red line, the reasonable and practicable short tariff or shortest route from such mines to such points.

The present short tariff route from such mines to Byron applies via the New York Central and Danville to Chicago, thence Chicago Great Western, and the present short tariff route from such mines to Rochelle applies over the New York Central, via Danville and Ladd, thence Chicago, Milwaukee, St. Paul and Pacific Railroad. A reasonable and practicable short tariff route which could be established from such mines to both Rochelle and Byron would be via the New York Central to Grayville, thence Illinois Central to Mendota, thence Chicago, Milwaukee, St. Paul and Pacific. [fol. 1444] The reasonable and practicable short tariff route to Byron is 48.7 miles less and to Rochelle 88.4 miles less than the present short tariff route from such mines to such destinations.

The map on page 4 of this exhibit shows, by means of the solid red line, the present circuitous short tariff route from mines in the Southern Illinois group on the New York Central to Sterling, Illinois, and by means of the red, blue and red line, the reasonable and practicable short tariff route from such mines to such points. The mileage over the reasonable and practicable route from such mines to such

points is 347.3 miles and over the present short tariff route, 404.5 miles, or 57.2 miles longer.

Page 5 of this exhibit shows the present short tariff and shortest tariff route from mines on the Chicago & Eastern Illinois Railroad in the Southern Illinois group to Dixon, Freeport, Forreston, Polo, and Amboy, Illinois, five of the representative suspended Northern Illinois points. I have also shown, by means of the red, blue and red line, the reasonable and practicable short tariff route from such mines to such points. Sixteen miles of transportation service from such mines to each of these five representative points would be saved if the reasonable short tariff route indicated by the red, blue and red line, were established in place of the short tariff route now applicable.

It is important to note that prior to July 31, 1942, the [fol. 1445] Chicago & Eastern Illinois Railroad maintained the route from the mines on its line in the Southern Illinois group to these representative suspended points named, which is indicated by the red, blue and red line, instead of the present longer route indicated by the solid red line, but on that date the shorter and more reasonable route was cancelled and the new longer route via Pana now in effect, was established, thus increasing the distance from the Southern Illinois mines served by the Chicago & Eastern Illinois to these five representative suspended points 16 miles each, or a total of 90 miles.

The Coal Traffic Representative of the Chicago & Eastern Illinois Railroad advised me that this change in routes was published through error, but that as some work would be involved in changing the route back to apply over that indicated by the red, blue and red line on this map, that they proposed to leave the present longer route in effect, which because of its longer distance obviously aids them in their present plea for increased rates from the Southern Illinois mines to such important points.

Mr. McElroy: Right at that point, was that route changed after these rates were suspended by the Illinois Commerce Commission, or before?

The Witness: It was changed on July 31st, 1942.

Mr. McElroy: That would be before the suspension?

The Witness: I believe it would, yes.

[fol. 1446] Mr. Stadell: In anticipation.

Mr. McElroy: All I had in mind, the carriers were not permitted to make any change in tariff routes while the

rates were in suspension. So they secured permission from the Illinois Commerce Commission to do that. Go ahead.

The Witness: A casual glance at the map on page 5 of this exhibit clearly shows that the present route of the Chicago & Eastern Illinois requires a back haul from Findlay Junction, approximately one half way between Sullivan and Shelbyville, back to Pana, Illinois. While the excess distance of 16 miles involved in the present route over the suggested route, which as I stated was in effect prior to July 31, 1942, from the Southern Illinois mines, on the Chicago & Eastern Illinois to the five representative suspended points named would not appear to be material, yet it must be remembered that to these five points this results in a total excess distance of 90 miles, which results in materially inflating the average distance to the suspended Northern Illinois territory as a whole. A difference in distance of 16 miles also generally results in causing the rates to be increased by one or more mileage blocks when they are measured by or based upon any scale, such as the Midland, Holmes and Hallowell, or 23922 scales, and such a substantial increase in the rates from the Southern Illinois mines is of the utmost importance, as it inevitably throws such rates out of proper relation to the rates from the mines [fol. 1447] in Indiana.

On the map, page 6 of my Exhibit No. 30, the solid red line shows the present circuitous short tariff route from mines in the Southern Illinois group served by the Chicago & Eastern Illinois Railroad to Sterling, Illinois, and the combination red and blue line shows the location of the reasonable and practicable short tariff route which should be established from such mines to such points.

The present short tariff route applies via Chicago & Eastern Illinois, Chicago Heights, Illinois, Elgin, Joliet & Eastern, West Chicago, and Chicago & North Western. The reasonable and practicable route indicated by the red and blue line, applies via Chicago & Eastern Illinois, Altamont, Baltimore and Ohio to Bando, thence Chicago & North Western. The reasonable and practicable short tariff route which I have indicated was published as a tariff route from mines in the Southern Illinois group served by the Chicago & Eastern Illinois to Sterling until June 8, 1942, when it was cancelled and the present circuitous short tariff route, indicated by the solid red line was established. The distance over the present short tariff route from such mines

to Sterling is 415 miles, and over the former short tariff route, which I have indicated as the reasonable and practicable short tariff route, is 315 miles, 100 miles shorter. This is but another illustration of how the average distance [fol. 1448] over the short tariff and shortest tariff routes from the Southern Illinois mines to the Northern Illinois points involved in these proceedings have been grossly inflated by the establishment by the petitioning and respondent railroads of the circuitous short tariff and shortest tariff routes which are now in effect.

On the map, page 7 of my Exhibit No. 30, the solid red line shows the present short tariff route from mines on the Chicago & Eastern Illinois in the Southern Illinois group to Rochelle, Illinois, and the red and blue line shows the location of the reasonable and practicable short tariff route from such mines to such points. The distance over the present short tariff route is 381 miles, and over the reasonable and practicable short tariff route, 306.8 miles or 74.2 miles less.

By Mr. Stadell:

Q. In this connection, could you tell us what proportion of the total commercial coal tonnage that was shipped from the Southern Illinois group in 1941, as illustrative, originated at mines served by the Chicago & Eastern Illinois?

A. But 1.4 per cent of the total commercial coal tonnage shipped from all mines in the Southern Illinois group to all destinations in 1941 originated on the Chicago & Eastern Illinois. The percentage of the total tonnage originated by that railroad in that group have been substantially the same during the past several years.

[fol. 1449] Q. Does the Chicago & Eastern Illinois Railway Company serve mines in Indiana?

A. Yes, as indicated by my Exhibit 22, it serves mines in Brazil-Clinton, Linton-Sullivan and Princeton-Ayrshire. In 1941, 219,388 tons of coal originated on that railroad in the Brazil-Clinton Group, or 12 per cent of the total commercial coal tonnage shipped from all mines in that group to all destinations. During the same year, 239,675 tons of coal originated on that railroad in the Linton-Sullivan Group, and this was but 5.63 per cent of the total commercial coal tonnage that was shipped from all mines in that group to all destinations, during that year. In the same year 800,229 tons of coal originated on the C & EI

at mines in the Princeton, Indiana, Group, and this was 16.17 per cent of the total commercial coal tonnage that was shipped from all mines in the Princeton Group to all destinations during 1941.

Therefore, there was a total of 1,259,292 tons of commercial coal that originated in the year 1941, as illustrative, at mines in Indiana served by the C & EI. In addition, of course, it participated in hauling additional tonnage of Indiana coal that originated at mines on other railroads during that year. The tonnage originated by the C & EI in Indiana in 1941 is almost ten times as great as originated on that road in the Southern Illinois Group.

Q. Will you now please take up page 8 of your Exhibit No. 30?

[fol. 1450] A. On page 8 of such exhibit, I have shown the location of the present short tariff route from origin points on the Baltimore and Ohio Railroad in the Southern Illinois group to Belvidere, Illinois, and by means of the red and blue line, the reasonable and practicable short tariff route from such origin points to such destination. The distance over the present short tariff route is 433.3 miles, and over the reasonable practicable short tariff route 372.9 miles, or 60.4 miles shorter.

On page 9 of this exhibit the solid red line shows the present short tariff route from origin points on the Baltimore and Ohio in the Southern Illinois group to Rockford and Freeport, Illinois, and the red and blue line shows the reasonable and practicable short tariff route from such origin points to such destinations. The present short tariff route to Rockford applies via Baltimore and Ohio, Bando, thence Chicago & North Western, while the reasonable practicable short tariff route applies via the Baltimore and Ohio to Pana, Illinois Central to Mendota, thence Chicago, Milwaukee, St. Paul and Pacific. The distance over the present short tariff route from such origins to Rockford is 458 miles, and over the reasonable practicable short tariff route indicated, 330.2 miles or 127.8 miles less.

To Freeport, the present short tariff route applies via Baltimore and Ohio, Bando, and Chicago and North Western, while the reasonable practicable short tariff route [fol. 1451] applies via the Baltimore and Ohio to Pana, thence Illinois Central. The distance via the present route from origins in the Southern Illinois group on the Baltimore

and Ohio to Freeport is 476 miles, while the distance over the reasonable practicable route is 339.5 miles or 136.5 miles less. It should not be overlooked that Rockford and Freeport are two of the most important destinations involved in these proceedings. The substantial inflation in the average distances from the Southern Illinois mines to such points caused by the computation of such distances over the present short tariff and shortest tariff routes make the present rates from such mines to such points appear to be much lower than they actually are when measured by the ton-mile earnings produced by such rates or by the percentage that such rates are of any scale and average distances computed over reasonably direct short tariff routes.

On the map, page 10 of my Exhibit No. 30, the solid red line shows the present short tariff route from origins on the Baltimore and Ohio in the Southern Illinois group to Byron, Illinois, and the red and blue line, the reasonable practicable short tariff route from such origins to such point. The zigzag out-of-line character of the present short tariff route is readily apparent from a glance at this exhibit. The distance over such route is 76½ miles greater than over the reasonable practicable short tariff route which I have indicated.

Q. At this point, could you tell us what percentage of the [fol. 1452] total commercial coal tonnage that is shipped from the Southern Illinois group to all destinations originates at origin points or mines in that group served by the Baltimore and Ohio?

A. For a number of years, there has been virtually no tonnage shipped from any mine or origin in the Southern Illinois group on the Baltimore and Ohio, as the mines in that group on that railroad have been abandoned. At the present time there is one very small mine located on that carrier in that group. However, substantially all of its tonnage is consumed locally or shipped by truck. Of the 10,745,573 tons of commercial coal which were shipped from the Southern Illinois group to all destinations in 1941, but 2,593 tons or .002 per cent of the total originated at mines served by the Baltimore and Ohio, and it is my understanding that none of this tonnage went to the territory involved in these proceedings, but was shipped to short haul points in Southern Illinois.

On the map, page 11 of my Exhibit No. 30, the solid red line shows the present circuitous short tariff route from mines or origins in the Southern Illinois group served by the Chicago, Burlington & Quincy to Polo, Illinois, and the red and two blue lines shows two reasonable practicable short tariff routes either of which could be established from such origins to such point.

The present route applies via the C. B. & Q. direct via Aurora, and involves a haul substantially out of line from [fol. 1453] Vermont to Aurora in a reverse direction from Polo, and a direct back haul from Aurora to Polo. The C. B. & Q. could handle this traffic via its line through Vermont and Savanna to Polo, as indicated by the red and blue line, through those points. The saving in distance over this route would be approximately 66 miles, as compared with the distance over the present circuitous short tariff route. A reasonable and practicable short tariff route could also be established, as indicated by the red and blue line, via the C. B. & Q., Centralia, thence Illinois Central. The distance over this latter route from origins on the C. B. & Q., in the Southern Illinois group to Polo would be 298.2 miles or 153.5 miles shorter than the 451.7 miles over the present short tariff route.

On page 12 of this exhibit the solid red line shows the present circuitous short tariff route from origins in the Southern Illinois group on the C. B. & Q., to Belvidere, Illinois, and the red and two blue lines shows two shorter and, in our opinion, more reasonable short tariff routes, either of which could be established from such origins to such destination. As will be noted from the solid red line, the present short tariff route involves a considerable haul away from Belvidere in an easterly direction from DeKalb to West Chicago, and thence a back haul from West Chicago to Belvidere. The C. B. & Q. maintains a short tariff route in connection with the present rates from origins on its line [fol. 1454] in the Southern Illinois group to DeKalb, Dixon and Sterling, three of the other representative suspended Northern Illinois points via its line from such origins to Virden, Illinois, thence Chicago and North Western. Virden, Illinois, is located just south of Springfield and Auburn, Illinois, at the junction of the red and blue line shown on this map, which has been marked by a circle. Obviously, if this short tariff route from such origins to DeKalb, Dixon and Sterling is reasonable and proper, the

same route would be proper to Belvidere. The route from C. B. & Q., Southern Illinois origins to Belvidere via that road to Virden, thence the Chicago and North Western, is 53 miles shorter than the distance over the present short tariff route from such origins to such points.

The more reasonable practicable short tariff route from these origins to Belvidere would be that applying via the red line and blue lines over the C. B. & Q. to Centralia, Illinois Central to Mendota, Chicago, Milwaukee, St. Paul and Pacific to Rockford, and Chicago and North Western. The distance over this route would be but 325.9 miles or 138 miles shorter than the distance of 463.9 miles over the present circuitous short tariff route.

On page 13 of my Exhibit No. 30, the solid red line shows the present short tariff route from C. B. & Q. origins in the Southern Illinois group to Rochelle. It will be noted that this route winds back and forth across the state of Illinois, [fol. 1455] first going in a westerly direction away from the Southern Illinois group, and Rochelle, thence in an easterly direction past Rochelle to Aurora, and requiring a back haul from Aurora to Rochelle.

Here again, I desire to direct attention to the fact that the C. B. & Q. maintains a short tariff route from the mines and origins in the Southern Illinois group to DeKalb, Dixon, and Sterling, in connection with the present rates via its line to Virden, thence Chicago and North Western, which route would also be much more reasonable and logical to Rochelle than its present short tariff route to that point. If the present tariff route from origins on the C. B. & Q. in the Southern Illinois group via Virden and the Chicago and North Western to DeKalb, Dixon, and Sterling is reasonable and proper, it would seem obvious that there are no reasons why such route would not also be reasonable and proper to Rochelle which is located between DeKalb and Dixon.

The distance via the present short tariff route of the C. B. & Q. to Rochelle is 423.6 miles or 105.5 miles longer than the distance of 318.8 miles via the suggested route of that road to Virden, thence Chicago and North Western. Another reasonable and practicable short tariff route from origins on the C. B. & Q. in the Southern Illinois group to Rochelle could also be established, as indicated by the red and blue line shown on page 13 of this exhibit, via the [fol. 1456] C. B. & Q. to Centralia, thence Illinois Central

to Mendota, and Chicago, Milwaukee, St. Paul and Pacific. The distance via this route would be but 285.1 miles or 138.5 miles shorter than the 423.6 miles over the present circuitous short tariff route.

On the map, page 14 of my Exhibit No. 30, the red line shows the present short tariff route from origins in the Southern Illinois group on the Chicago, Burlington & Quincy to Amboy, Forreston, Freeport, and Rockford, Illinois. To Amboy, such short tariff route applies via the C. B. & Q. direct, and involves a back haul from Mendota to Amboy. In our opinion a more reasonable short tariff route from such origins to Amboy would be that indicated by the red and blue line via the C. B. & Q. to Centralia, thence Illinois Central. The distance via the latter route is 84.3 miles shorter than via the present short tariff route.

To Forreston, the present short tariff route applies via the C. B. & Q. to Mendota, thence Chicago, Milwaukee, St. Paul and Pacific. A more reasonable short tariff route, in our opinion, is that which I have indicated on this exhibit by the red and blue line via the C. B. & Q. to Centralia, thence the Illinois Central. The distance over the latter route is 83.5 miles shorter than via the present short tariff route.

To Freeport, Illinois, the present short tariff route from origins on the C. B. & Q. also apply via that road to Mendota, thence Chicago, Milwaukee, St. Paul and Pacific. The rea- [fol. 1457] sonable practicable short tariff route indicated by the red and blue line applies via C. B. & Q. to Centralia, thence Illinois Central. The distance via the latter route is 108.5 miles shorter than via the present short tariff route.

As shown by the solid red line the present short tariff route to Rockford applies via the C. B. & Q. to Mendota, thence C. M. St. P. & P., while the reasonable and practicable short tariff route, which I have indicated by the red and blue line, applies via C. B. & Q. to Centralia, Illinois Central, Mendota, thence C. M. St. P. & P. The mileage over this latter route is but 311.2 miles or 75.4 miles shorter than the distance of 386.6 miles over the present short tariff route from origins on the C. B. & Q. in the Southern Illinois group to Rockford.

On page 15 of my Exhibit No. 30, the solid red line shows the present short tariff route from origins on the C. B. & Q. in the Southern Illinois group to Geneva, Illinois. The red

and two blue lines shows two shorter and in our opinion more reasonable short tariff routes which could be established from such origins to such point. The C. B. & Q. maintains a short tariff route in connection with the present rate from origins on its line to DeKalb, Dixon, and Sterling, via Virden and the C. & N. W. As previously stated, Virden is located just south of Springfield and Auburn at the junction between the red and blue lines shown on this map, which I have circled. If this short tariff route is reasonable [fol. 1458] and practicable in connection with the rates to DeKalb, Dixon, and Sterling, there is obviously no reason why it is not also reasonable and practicable to be applied in connection with the rates to Geneva.

The average distance over this latter route from origins on the C. B. & Q. in the Southern Illinois group to Geneva is 357.4 miles or 52.8 miles shorter than the average distance from such origins to such points over the present short tariff route. As indicated by the red and other blue line on page 15 of this exhibit, another shorter and more reasonable short tariff route than the present one could be established from such origins to Geneva via the C. B. & Q. to Centralia, Illinois Central to Matteson, E. J. & E. to West Chicago, thence C. & N. W. The distance over this route is 84.6 miles shorter than via the present short tariff route.

Q. Does the Chicago, Burlington & Quincy Railroad originate a substantial proportion of the total commercial coal tonnage that is shipped from the Southern Illinois group?

A. It used to, but not such a substantial proportion any more. In 1930 and 1931, as illustrative, which was about the time of the hearings in Docket No. 23130, the Chicago, Burlington & Quincy originated 42 per cent and 41 per cent, respectively, of the total commercial tonnage shipped from all mines in the Southern Illinois group to all destinations. This proportion, however, has declined substantially each year, so that in 1940, as illustrative, that carrier originated [fol. 1459] but 19 per cent of the total commercial tonnage shipped from the Southern Illinois group to all destinations.

Q. Has some of this proportion of the total tonnage been shifted to some other railroad?

A. Yes. For example, in 1930 the Illinois Central originated but 19 per cent of the total commercial tonnage shipped from the Southern Illinois group to all destinations. In 1931 it originated 25 per cent, and in 1940, 37 per cent.

Q. Now, proceed with the explanation of pages 16, 17 and 18 of your Exhibit No. 30.

A. The red line on the map, page 16 of this exhibit, shows the present short tariff route from origins on the Louisville and Nashville Railroad in the Southern Illinois group to Belvidere and DeKalb, Illinois, namely, via that road to Ashley, Illinois Central to South Pekin, and Chicago and North Western. The distance to Belvidere via this route is 453.7 miles and to DeKalb 377.2 miles. A shorter and in our opinion more reasonable short tariff route could be established to Belvidere, as indicated by the red line, to Mt. Vernon, the blue line through Chicago Heights and West Chicago, thence the red line to Belvidere. This route is via Louisville and Nashville to Mt. Vernon, Chicago & Eastern Illinois to Chicago Heights, E. J. & E. to West Chicago, thence Chicago and North Western. The distance via this route is 50.2 miles less than via the present short tariff route.

[fol. 1460] A still shorter and, in our opinion, more reasonable short tariff route could be established, as indicated by the red and blue line, via Louisville and Nashville to Ashley, Illinois Central to Mendota, C. M. St. P. and P. to Rockford, thence C. and N. W., such route being 90.9 miles shorter than the present route from the Louisville and Nashville origins to such point. To DeKalb, Illinois, a shorter and more reasonable route, in our opinion, could be established via Louisville and Nashville to Ashley, Illinois Central to LaSalle, L. S. & B. C., LaSalle Junction, and Chicago and North Western. This route is 46.6 miles shorter than the present short tariff route from Louisville and Nashville origins in the Southern Illinois group to DeKalb.

Q. What proportion of the total coal tonnage shipped from the Southern Illinois group originates on the Louisville and Nashville?

A. None. As a matter of fact, there has been no coal produced at or shipped from any origin point in the Southern Illinois group served by that railroad since about 1927. However, that railroad has not eliminated such origin points from its tariff and the railroads therefore continue to use the mileages over the circuitous short tariff routes from such origin points in computing their average short tariff route mileages from the Southern Illinois group in every case involving the rates from that group.

[fol. 1461] Q. Now, take up page 17 of your Exhibit No. 30.

A. The solid red line on page 17 shows the present short tariff route from origins in the Southern Illinois group on the Missouri Pacific Railroad to Belvidere, DeKalb, and Rochelle, Illinois, namely, via that road to East St. Louis, Litchfield & Madison Railroad to Benld, Illinois, thence Chicago and North Western. A shorter and, in our opinion, more reasonable short tariff route could be established from such origins to such points, as indicated by the red and blue line. To Belvidere this route would be via Missouri Pacific, Herrin, Illinois Central, Mendota, C. M. St. P. and P. to Rockford, thence Chicago and North Western, and the mileage over such route would be 117.4 miles less than via the present route. To DeKalb the suggested reasonable route is via Missouri Pacific, Herrin, Illinois Central, LaSalle, L. S. & B. C., LaSalle Junction, thence Chicago and North Western, and to Rochelle it is via the Missouri Pacific, Herrin, Illinois Central, Mendota, Chicago, Milwaukee, St. Paul and Pacific, these two routes being 73.4 miles and 65.5 miles respectively, shorter than the present short tariff route from such origins to DeKalb and Rochelle.

The solid red line on page 18 of this exhibit shows the present short tariff route from Missouri Pacific origins in the Southern Illinois group to Rockford, namely, via Missouri Pacific, Herrin, and Illinois Central. A more rea-
[fol. 1462] sonable short tariff route, in our opinion, would be that indicated via the red and blue line, namely, Missouri Pacific, Herrin, Illinois Central, Mendota, and C. M. St. P. and P., this route being 37 miles shorter than the present route.

It should be noted that while in connection with the route shown on page 18 from origins on the Missouri Pacific in the Southern Illinois group to Rockford, the Missouri Pacific interchanges its coal traffic from such origins to such point with the Illinois Central at Herrin, it does not interchange the coal traffic originating at the same origins and destined to Belvidere, DeKalb, and Rochelle, Illinois, with the Illinois Central at Herrin, but instead hauls it in a southwesterly direction away from such origins and such destinations, thence via roundabout route up through East St. Louis where it interchanges it with the Litchfield &

Madison to move to Benld, thence C. & N. W. It would seem obvious that if the Missouri Pacific considers it reasonable to interchange the Rockford shipments from such origins with the Illinois Central at Herrin, it would likewise be reasonable to interchange the Belvidere, De Kalb, and Rochelle shipments from the same origins with that railroad at Herrin, as we suggest in connection with the reasonable short tariff route that should be established from such origins to such points.

Q. Does the showing which you have made include all of the circuitous, or what you consider to be circuitous [fol. 1463] short tariff and shortest tariff routes from the Southern Illinois group to the representative suspended points, or are there others in addition to those which you have shown on the series of maps in your Exhibit No. 30?

A. No, in the interest of conserving time, I have not shown all of them. The ones which I have shown on the maps contained in my Exhibit No. 30 are merely illustrative of others which apply in connection with the present rates from the Southern Illinois group to such representative suspended Northern Illinois points.

(Exhibit No. 30, Witness Rozene, received in evidence.)

By Mr. Stadell:

Q. Do the existence of the present circuitous short tariff and shortest tariff routes from the Southern Illinois mines to such representative Northern Illinois points and the use of the distances over those routes result in materially longer average distances from that group to such points than would result by the use of the distances over the reasonable short tariff or shortest tariff routes which you have suggested?

A. Yes. The average mileages over the short tariff or shortest tariff routes from the Southern Illinois group to the representative suspended Northern Illinois points and to other points in the same vicinity in Northern Illinois would be very materially reduced if they were computed over reasonably direct short tariff or shortest tariff routes, such as I have suggested.

[fol. 1464] Q. Have you made any computations to determine how much the average mileages from the Southern Illinois group to any of such points would be reduced if they were computed over reasonably direct short tariff

routes, such as you have suggested, instead of via the present circuitous short tariff and shortest tariff routes. If so, will you please give us the results of your computations?

A. Yes. If the average mileages from the Southern Illinois group to the representative suspended points were computed over reasonable and logical short tariff routes from that group to such points such as I have suggested, instead of over the present circuitous short tariff routes which have been used by the railroads in their Exhibits Nos. 3 and 4, the average short tariff route mileages shown in their exhibits from such group to such points would be reduced by the following amounts: To Amboy, 23 miles; Belvidere, 87 miles; Byron, 18 miles; DeKalb, 35 miles; Dixon, 7 miles; Forreston, 21 miles; Freeport, 31 miles; Geneva, 49 miles; Polo, 33 miles; Rochelle, 59 miles; Rockford, 45 miles; and Sterling; 22 miles.

It is therefore apparent that the use of the much shorter average mileages over the suggested reasonable and practicable short tariff routes would result in the ton-mile earnings produced by the present rates from that group to such points being considerably higher and in such rates being a considerably higher percentage of the Midland [fol. 1465] Electric, 23922, and other scales than are reflected by such rates when measured by the greater average mileages over the circuitous short tariff or shortest tariff routes which are used by the railroads in their Exhibits Nos. 3 and 4 and in my Exhibits Nos. 23 and 29.

Exam. Trezise: We will have a few minutes recess.

(A recess was taken.)

Exam. Trezise: All right, gentlemen, when you are ready we will begin. Proceed.

By Mr. Stadell:

Q. Earlier in your testimony you stated that, in your opinion, the present interstate rates from the Illinois mines to the comparative points in Southern Wisconsin are on an improper basis, and that such rates therefore do not provide a proper yardstick to be used in measuring the lawfulness of the suspended rates from the Illinois mines to the Northern Illinois points involved in these proceedings. What did you mean by that statement?

A. On September 10, 1924, the rates from the Southern Illinois group to the representative comparative points in Southern Wisconsin, as well as to other points in that state, were increased from 23 to 34 cents per ton by the railroads in purported compliance with the Interstate Commerce Commission's order in the Lake Dock Coal Cases, 89 ICC 170. The order in that case was based upon a finding that the interstate rates from the Southern Illinois group to such points in relation to the intrastate rates from coal [fol. 1466] docks on Lake Michigan and Lake Superior in Wisconsin to such points, resulted in undue prefereace of the Southern Illinois mines and undue prejudice to such docks, in violation of Section 3 of the Act. Such order required the alleged undue prejudice and preference to be removed by the establishment of certain increased differences between the interstate rates from the Southern Illinois group, on the one hand, and the intrastate rates from such Wisconsin docks, on the other, and the railroads complied with such order, by accepting the existing intrastate rates as proper and increasing the Southern Illinois rates to such points by the amounts which I previously mentioned, for the purpose of establishing the required differences between the rates from that group, on the one hand, and such docks on the other. For example, to Madison, Wisconsin, the rate from the Southern Illinois group prior to compliance with such order, or on September 9, 1924, was $2.52 per ton, or 94 cents per ton higher than the intrastate rate of $1.58 then in effect from the Wisconsin Lake Michigan docks to such point. On September 10, 1924, this difference was increased to $1.17, by increasing the rate from the Southern Illinois group from $2.52 to $2.75, or 23 cents per ton.

It is our position that the order in such case was invalid, as the Commission did not have and has never had any authority to pass upon or to require the removal of alleged undue prejudice to intrastate commerce or shippers, and [fol. 1467] undue preference of interstate commerce and shippers, caused by the relation of interstate versus intrastate rates, and it has so held in innumerable cases since its decision in the Lake Dock Coal Cases. As a matter of fact, its order in the Lake Dock Coal Cases was vacated and set aside, upon our petition, on October 3, 1939, in Northwestern Coal Dock Operators Association versus Chicago and Alton Railroad Company, 234 ICC 679. Notwithstand-

ing the fact, however, that the rates from the Southern Illinois group to points in Wisconsin, including the representative comparative points in that state should never have been increased because of the invalid character of the Commission's order in the Lake Dock Coal Cases, and although the Commission has vacated and set aside such order, the railroads have refused to reduce the present rates from the Southern Illinois group to such points by the amounts that they increased them, in purported compliance with such order.

In addition, very substantial reductions have been made since the decision in that case, in the rates on coal from the docks on Lake Michigan and Lake Superior in Wisconsin to destinations throughout that state by virtue of an order of the Wisconsin Public Service Commission in its Docket 2-R-633. These reductions became effective May 1, 1939. To Janesville and Beloit, as illustrative, the rates from the Lake Michigan Wisconsin docks were reduced on May 1, 1939, 38 cents per ton on large coal, and 53 cents per ton on [fol. 1468] fine coal, and to Madison, 28 cents per ton on large coal and 43 cents per ton on fine coal.

The maintenance of the present rates from the Southern Illinois group to points in Wisconsin, including the representative comparative points, which include the substantial increases that were made in purported compliance with the order in the Lake Dock Coal Cases, and the large reductions which have been made since the decision in that case in the rates from the Lake Michigan and Lake Superior Wisconsin docks to such points, have very substantially increased the spread or difference between the rates from the Southern Illinois group, on the one hand, and such docks on the other, so that they are much greater at the present time than those which were in effect prior to the Lake Dock Coal Cases, or which were established in purported compliance with the Commission's order in that case.

Q. Were you present at the prior hearings herein when Mr. Wilkinson asked Mr. Flansburg, on cross examination, whether the rates from the Indiana mines to points in Wisconsin were increased on September 10, 1924, by the same amounts as were the rates from the Southern Illinois group, thus preserving the differences between such rates, and did you hear Mr. Flansburg's reply that he was not sure but he thought they were?

A. Yes, I heard such question and answer. However, Mr. [fol. 1469] Flansburg was incorrect. I have made a thorough check into this matter, and the rates from the Indiana mines to points in Wisconsin, including the comparative points used in these proceedings, were not increased by the same amounts as were the Southern Illinois rates on September 10, 1924. As a matter of fact, no increases were made in the rates from the Indiana mines to such points until July 19, 1925, and then the increases were not as great as were made in the rates from the Southern Illinois group on September 10, 1924.

As illustrative, while the rate from the Southern Illinois group to Beloit was increased 23 cents per ton on September 10, 1924, the rates from the Indiana groups to such point were not increased until July 19, 1925, and were then only increased by the following amounts: Linton-Sullivan, 9 cents; Brazil-Clinton, 12 cents; Princeton, 7 cents; Boonville 6 cents.

On September 10, 1924, the rates from the Southern Illinois group to Janesville and Madison were increased 23 cents per ton, while on July 19, 1925, the rates from the Indiana groups to Janesville were increased 19 cents per ton from the Linton-Sullivan group, 22 cents per ton from the Brazil-Clinton group, 17 cents per ton from the Princeton group, and nothing from the Boonville group. To Madison, the rates from the Indiana groups were increased on that date 16 cents per ton from the Linton-Sullivan group, 18 cents from the Brazil-Clinton group, but 14 cents from the Princeton group, and no increase was made in the [fol. 1470] rate from the Boonville group to such point.

On September 10, 1924, the rate from the Southern Illinois group to Watertown, Wisconsin, was increased 24 cents and on July 19, 1925, the Linton-Sullivan rate was increased but 19 cents per ton, the Brazil-Clinton rate was increased 22 cents per ton, the rate from Princeton was increased but 17 cents per ton, and the rate from Boonville to such point was actually reduced 9 cents per ton.

Mr. Cardy: Mr. Examiner, I don't see what this adjustment in Wisconsin has to do with the issues involved here, in other words, as compared to what they did in Wisconsin.

Mr. Stadell: It has a lot to do with it before we get through, Mr. Cardy, if you will just permit us to go ahead.

Mr. Cardy: Well, I would just like to know. I don't like to interrupt you.

Exam. Trezise: Go ahead.

Mr. Cardy: All right.

The Witness: These substantially smaller increases, and in some cases reductions which were made in the rates from the Indiana groups, than the increases which were made in the rates from the Southern Illinois group to points in Wisconsin, resulted in changing the differences between the rates from the Southern Illinois group, on the one hand, and such Indiana groups, on the other, which were in effect prior to September 10, 1924, to the substantial disadvantage [fol. 1471] of the Southern Illinois mines and to the advantage of the Indiana mines. The different increases which were made in the various rates from the Indiana groups on July 19, 1925, also changed the differences which existed between the rates from such groups to points in Wisconsin prior to that date.

By Mr. Stadell:

Q. Now have you prepared an exhibit showing the rates which were in effect from the Southern Illinois group, on the one hand, and the Wisconsin Lake docks on the other, to points in Wisconsin, including the comparative Wisconsin points, on September 9, 1924, and the rates in effect at the present time, and the differences between the rates in effect on September 9, 1924, and at the present time from such docks, on the one hand, and the Southern Illinois group, on the other?

A. Yes, this information is contained in my Exhibit No. 31.

In column B of this exhibit I have shown the names of 18 representative points in Wisconsin, including Beloit, Burlington, Ft. Atkinson, Janesville, Lake Mills, and Madison, these latter 6 points being those used as comparative points by the railroads in these proceedings. In column D, I have shown the rates in effect on large and fine coal from the Southern Illinois group on September 9, 1924, which was the day preceding the increases in the rates from that group to such points, in purported compliance with the order in the Lake Dock Coal Cases. Column E shows the rates in effect from the Southern Illinois group to Wisconsin points on May 25, 1943, and at the present time, the date of May 25th being shown because that was when [fol. 1472] this exhibit was prepared for presentation in these proceedings. Column F shows the rates in effect from

the Wisconsin docks on September 9, 1924, and column G shows the present rates on large and fine coal from such docks to the Wisconsin points named. Column H shows the differences between the rates from such docks, on the one hand, and the Southern Illinois group, on the other, to such Wisconsin points, on September 9, 1924, and column I shows the substantially increased differences which are in effect at the present time. Column J of this exhibit shows what the present rates from the Southern Illinois group to each of the Wisconsin points shown would be if based upon the same difference over the present rates from the Wisconsin docks to such points, as existed between the rates from that group, on the one hand, and such docks, on the other, on September 9, 1924, or immediately prior to the increases in the rates from the Southern Illinois group, in purported compliance with the Lake Dock Coal Cases order.

It will be noted that the rates shown in column J from the Southern Illinois group are very substantially lower than are the present rates from such group to the Wisconsin points named. Even if the present rates from the Southern Illinois group to such Wisconsin points were made to reflect the same difference over the present rates from the Wisconsin docks to such points as were established by virtue of the order in the Lake Dock Coal Cases, they [fol. 1473] would be substantially lower than the present rates from such groups to such points because of the large reductions which were made in the rates from such docks to such points by virtue of the order of the Wisconsin Commission on May 1, 1939.

As illustrative, in the Lake Dock Coal Cases, the Commission prescribed a difference of 1.17 per ton between the rates from the Southern Illinois group on the one hand, and such docks on the other, to Janesville, Madison, and certain other Southern Wisconsin points. This difference added to the present large coal rate of $1.37½ and the present fine coal rate of $1.22½ from such docks to Madison would produce rates of $2.54½ on large coal and $2.39½ on fine coal from the Southern Illinois group to Madison, in lieu of the present rate of $2.90 on both sizes, and rates of $2.44½ and $2.30½ on large and fine coal from the Southern Illinois group to Janesville, in lieu of the present rate on both sizes of $2.79 per ton.

Q. Can you give us the differences which were prescribed by the Commission in the Lake Dock Coal Cases between the rates from the Southern Illinois group, on the one hand, and the Wisconsin docks, on the other, to some of the other important Wisconsin points shown on your Exhibit No. 31, which differences were made effective by the railroads in purported compliance with the decision in that case on September 10, 1924?

[fol. 1474] A. Yes. I have already mentioned the differences prescribed in that case between the rates from the Southern Illinois group, on the one hand, and such docks, on the other, to Janesville and Madison, and what the present rates from the Southern Illinois group would be if based upon those prescribed differences over the present rates from such docks to such points.

In the Lake Dock Coal Cases the Commission prescribed the following differences between the rates from the Southern Illinois group, on the one hand, and the Wisconsin docks, on the other, to the Wisconsin points which I will name, and these differences were made effective by the railroads on September 10, 1924, by increasing the rates from the Southern Illinois group by the amounts required to establish such differences over the then existing rates from such docks to such points: To Beloit, $1.17 per ton; to Burlington, $1.65 per ton; to Dodgeville, 86 cents per ton; to Fort Atkinson, $1.40 per ton; to Janesville, $1.17 per ton; to LaCrosse, $1.06 per ton; to Lake Mills, $1.24 per ton; to Madison, $1.17 per ton; and to Monroe, $1.01 per ton. All of these points are located in the Southern portion of Wisconsin and most of them have been used by the railroads as representative comparative points in these proceedings.

As will be noted by reference to my Exhibit No. 31, if the present rates from the Southern Illinois group to these Wisconsin points were made by adding these prescribed [fol. 1475] differences to the present rates from the Wisconsin docks to such points, they would all be substantially lower than they are.

(Exhibit No. 31, Witness Rozene, received in evidence.)

By Mr. Stadell:

Q. Have you prepared an exhibit showing what the levels of the rates from the various Illinois groups to the representative comparative Wisconsin points would be, basing

the rates from the Southern Illinois group on the same difference over the present rates from the Lake Michigan Wisconsin docks to such points, as existed between such rates on September 9, 1924, and basing the rates from the other Illinois groups on the present difference or differentials under such constructed rates from the Southern Illinois group?

A. Yes. This exhibit has been marked No. 32.

Taking page 1 of such exhibit, as illustrative, I have shown in column D what the rates from the Southern Illinois group to Beloit, Wisconsin, would be if based upon the same difference, namely, 94 cents per ton, over the present rates from the Lake Michigan docks to such points as existed between the rates from the Southern Illinois group, on the one hand, and such docks, on the other, to that point on September 9, 1924, that is, on the day before the Southern Illinois rates were increased, in purported compliance with the order of the Commission in the Lake Dock Coal Cases. This rate from the Southern Illinois group to Beloit, and the rates from that group to the [fol. 1476] other representative comparative Wisconsin points shown in the subsequent pages of this exhibit, are the same as those shown from that group to such points in my preceding Exhibit No. 31. The rates from that group to such points in both of these exhibits were constructed in the manner just described.

On page 1 in column D of my Exhibit No. 32, I have also shown what the rates from each of the other Illinois groups to Beloit would be if made the same difference over the constructed rate from the Southern Illinois group, as exists at the present time between the rates from that group, on the one hand, and such other Illinois groups, on the other, to such point.

Column E shows the average short tariff route mileages, computed by the railroads in the present proceedings, from each of such groups to such points, and columns F, H and J show the levels of these rates from each of the Illinois groups to Beloit as measured by the ton-mile earnings produced by such rates and by the percentage that they are of the Midland and 23922 scales.

The same character of information is shown on pages 2 to 6 of this exhibit from such Illinois groups to Burlington, Fort Atkinson, Janesville, Lake Mills, and Madison, the other five representative comparative Wisconsin points

used by the railroads in their rate and mileage exhibits in these proceedings.

Exam. Trezise: And when you say short tariff route [fol. 1477] there, you mean the short tariff route that was shown by the railroads?

The Witness: Yes, sir.

Mr. Stadell: In their Exhibits Nos. 3 and 4 in these proceedings?

The Witness: Yes, sir.

(Exhibit No. 32, Witness Rozene, received in evidence.)

By Mr. Stadell:

Q. Now, have you prepared an exhibit showing what the average level of the rates from the Illinois groups or mines as a whole to all of the 14 representative comparative points would be if the rates from such groups to the six representative comparative Wisconsin points constructed as shown in your Exhibit No. 32, are used, in lieu of the present rates from such groups to such points, and if the present rates from such groups to the balance of such comparative points in Northern Illinois and Iowa are used?

A. Yes. This exhibit has been marked as No. 33. It is a recapitulation of the information shown in my preceding Exhibit No. 32, with respect to the average short tariff route mileages and the constructed rates from the Illinois groups to the six representative comparative Wisconsin points, and of the information shown with respect to the present rates and average short tariff route mileages to the other representative comparative points in Northern Illinois and Iowa.

[fol. 1478] This exhibit shows that, based upon the average short tariff route mileages, the present rates from the Illinois groups and mines as a whole to the representative comparative Northern Illinois and Iowa points and the constructed rates from such groups and mines to the six comparative Southern Wisconsin points, produce average earnings of 8.3 mills per ton mile and average 76 per cent of the Midland scale, and 89 per cent of the 23922 scale.

It is our position that the constructed rates from the Illinois groups shown in my preceding Exhibit No. 32 to the comparative Southern Wisconsin points named, in conjunction with the present rates from such groups to the other

comparative points in Illinois and Iowa, comprise a much more reasonable and proper yardstick to use in measuring the lawfulness of the present or suspended rates from such Illinois groups to the Northern Illinois points involved in these proceedings than do the present rates from such groups to the comparative Northern Illinois and Iowa points and the present improper rates from such groups to the comparative Wisconsin points.

As indicated by my Exhibit No. 33, the present rates from the Illinois groups to the representative comparative Northern Illinois and Iowa points and the constructed rates from such groups to the representative comparative Southern Wisconsin points, average 76 per cent of the Midland scale and 89 per cent of the 23922 scale, as compared with the [fol. 1479] present rates from such groups to the representative suspended Illinois points, which average 79 per cent of the Midland scale and 90 per cent of the 23922 scale, and the suspended rates from such groups to such points, which average 82 per cent of the Midland scale and 93 per cent of the 23922 scale, as shown on page 1 of my Exhibit No. 24.

To further demonstrate that the present rates from the Illinois groups to the representative comparative Wisconsin points are unreasonably high, I wish to point out that in its very recent decision in the Fairbanks-Morse Case, the Commission found that the rates from such groups to Janesville and Fort Atkinson, two of such representative points, were unreasonably high and it required them to be reduced. While the reductions prescribed by it in such rates did not place them upon a proper level in relation to the substantial reduced rates from the Wisconsin lake docks, it did result in reducing the rates to such points substantially below the level of the present rates from the Illinois groups to the other representative comparative Wisconsin points, which are being used by the railroads in these proceedings to justify the proposed increased rates to the Northern Illinois points involved.

In its decision in the Fairbanks-Morse Case, the Commission used the Fulton-Peoria group as the base group in arriving at its prescribed rates from the Illinois groups to Fort Atkinson and Janesville, Wisconsin. The prescribed rates [fol. 1480] from the other Illinois groups to such points were made the same difference over the prescribed reduced rates from the Fulton Peoria group as were the then existing

rates from such groups to such points over the existing rates from the Fulton-Peoria group.

The prescribed rate from the Fulton-Peoria group to Fort Atkinson, as shown on page 22 of my Exhibit No. 23, is 77 per cent of the Midland scale, and as shown on page 23 of such exhibit, the prescribed rate from that group to Janesville is 91 per cent of such scale. The prescribed rates from such group to both points therefore average 84 per cent of such scale. If the rate from the Fulton-Peoria group to Madison were made 84 per cent of the Midland scale, it would be $2.04 per ton instead of $2.29 per ton, as at present, and if the rate from the Southern Illinois group to Madison were made by adding the present difference between the rates from the Fulton-Peoria group, on the one hand, and the Southern Illinois group, on the other, to the reduced rate from the Fulton-Peoria group to Madison, it would be $2.65 per ton instead of $2.90 per ton as at present. If the rate from the Fulton-Peoria group to Burlington were made 84 per cent of the Midland scale it would be $1.94 per ton instead of $2.33 per ton as at present, or a reduction of 39 cents per ton. Corresponding reductions in the rates from the other Illinois groups to Burlington would result by maintenance of the present difference over the reduced [fol. 1481] reasonable rate from the Fulton-Peoria group to such point.

Had the reasonableness of the present rates from the Fulton-Peoria and other Illinois groups to Madison, Burlington, and the other comparative Wisconsin points been before the Commission in the Fairbanks-Morse Case, it would seem obvious that such rates would also have been reduced to the same level, as were the rates from such groups to Fort Atkinson and Janesville.

Such reductions in the present rates from the Illinois groups to such other comparative Wisconsin points would have made the level of such rates much lower than are the present rates from such groups to such points and the level of such rates would have been much more nearly equal to the level of the present rates from such groups to the Northern Illinois points involved in these proceedings than is the level of the present unreasonable rates from such groups to such comparative Wisconsin points.

Mr. McElroy: Right at that point, may I interrupt, and ask if the level of the rates from Southern Illinois to these

points you refer to, Fort Atkinson, is lower than the level of the rates from Southern Illinois to Madison and Janesville?

The Witness: Yes, sir, they are.

Mr. McElroy: That is your point?

The Witness: Yes, sir.

By Mr. Stadell:

Q. Isn't it true, as shown by your exhibits, that the dis- [fol. 1482] tance from the Southern Illinois group to Madison, Wisconsin, is shorter than to Janesville, but that the present rate to Madison is about 11 cents a ton higher than to Janesville?

A. Well, the distance to Madison is 423 miles from Southern Illinois, and to Janesville is 406, a difference of 17 miles, and the rate is 11 cents higher. In other words, the distance to Madison is 17 miles greater and the rate is 11 cents greater.

Q. What average mileage are you using?

A. I am using the shortest tariff route mileage.

Q. That isn't the point I had in mind. We will check it up and make the record clear on that. Now, referring to your Exhibit No. 33, there are two blank spaces in the heading in which exhibit numbers should be filled in. What are those exhibit numbers?

A. The first one should be 32 and the other one should be 23.

Q. In the last column on Exhibit 33 you show a total per cent of the 23922 scale rates, and in connection with the figure 23922 you have a reference mark 1; what does that mean?

A. Well, that indicates a sub number to the original case in 23922.

Q. In other words, there were two cases there and one of them was Docket 23922 and the other was Sub No. 1?

A. That is right.

Q. Referring back a moment to page 1 of your Exhibit [fol. 1483] 32, Mr. Rozene, on the bottom of that exhibit there is a space for an exhibit number to be filled in. Can you give us that?

A. That should be Exhibit 31. On Exhibit 33, please, the last number at the bottom should be 24 instead of 23, as I stated.

I want to make an explanation here of Exhibit 32, page 1. As to the mileage shown in column E, the short tariff route mileage, you will note that some of these mileages run up as high as 340 and 358 miles, and we have there used the 23922 scale in comparing these rates, and I want to state that the 23922 scale only extends up to 300 miles; and for this comparison I have extended that 23922 scale at the same rate of progression as exists in the scale from 275 to 300 miles or 10 cents a ton, I think it is, for each 25-mile block.

Q. That is, you have extended it for the distances beyond 300 miles and at that rate of progression?

A. Yes—8 cents, instead of 10 cents.

Q. For each mileage block?

A. Yes, that is right.

Mr. Wilkinson: Have you increased the level of that scale to take care of the general increases that you say have been made since that scale was promulgated?

The Witness: Yes, sir.

By Mr. Stadell:

Q. What have you to say with respect to the contention of the petitioning and respondent railroads in these proceedings that it is necessary to increase the present rates [fol. 1484] from the Illinois mines, as they propose, because such rates menace the rate adjustment on coal in or into Wisconsin?

A. It is our position that such contention is entirely without merit, in view of the facts which I have previously related showing that the present rates on coal from the Illinois mines to points in Wisconsin are on an improper basis and the fact that since May 1, 1939, or for more than four years these railroads have been maintaining rates on coal from the Wisconsin docks to points throughout that state which are on a materially lower average level than are the present rates from the Illinois mines to points in Wisconsin or to points in Northern Illinois.

(Exhibit No. 33, Witness Rozene, received in evidence.)

By Mr. Stadell:

Q. Have you prepared an exhibit showing the average distances over the short tariff and shortest tariff routes, the present rates, and the rates which were in effect on coal

prior to May 1, 1939, from the Wisconsin docks to representative points in Wisconsin, and the percentage that the present rates are of the 23922 scale?

A. Yes, I have prepared such an exhibit and it has been marked Exhibit No. 34.

Q. Will you please explain what this exhibit contains in so far as any explanation is necessary?

A. The map on page 1 of such exhibit shows, by means of squares or blocks, the location of the various port cities on [fol. 1485] Lake Michigan and Lake Superior at which the coal docks are located. The open circles appearing on this map at Madison and the other points shown indicate the representative Wisconsin points to which we have shown the average short tariff and average shortest tariff route distances, and the present rates on large and fine coal and the rates in effect on May 1, 1939, from such docks.

On page 2, in column B, the name of each of the Wisconsin dock points from which rates are published to Janesville, Wisconsin, *are* shown under the name of the railroad which serves each of such points.

In column C, the average short tariff and shortest tariff route mileage from such docks to Janesville is shown.

Column D contains reference to the route over which such mileages were computed, and these routes are described on page 31 of such exhibit.

Columns E and F show the rates on large and fine coal which were in effect from each of such dock points on large and fine coal to Janesville prior to May 1, 1939.

Columns G and H show the substantially reduced rates on large and fine coal which were established on May 1, 1939, from each of such dock origins to such destinations.

Column I shows the 23922 scale for the average distances shown in column C.

Columns J and K show what per cent the present rates on [fol. 1486] large and fine coal from each of such docks to Janesville are of the 23922 scale, and Column L shows the per cent that the average of the large and fine coal rates is of the 23922 scale.

In line 21, of column C, it will be noted that the average short tariff route distance from all of such dock points to Janesville is 137.1 miles, and in the same line in column L, that the large and fine coal rates from such points to such destinations average 89 per cent of the 23922 scale.

In line 23, column C, it will be found that the average distance over the shortest tariff routes from such dock points to Janesville is 91 miles, and in the same line, in columns J, K and L, it is shown that the large coal rates for this mileage average 89.2 per cent, the fine coal rates 78.7 per cent and both the large and fine coal rates, 84 per cent of the 23922 scale.

Mr. McElroy: Right at that point, on line 23 you show in parentheses "eliminate those routes marked with an asterisk." What does that mean?

The Witness: That means we eliminate duplications of certain origins in order to determine the shortest tariff route, using each point but once.

By Mr. Stadell:

Q. In other words, that is the same method that you used in computing the average distances over the shortest tariff routes from the mines and origins in the various Illinois and Indiana groups?

[fol. 1487] A. Yes, sir.

Q. To the representative suspended and comparative points which are shown in your Exhibits 27 and 28?

A. Yes, sir.

Mr. Boden: They include all of the docks and rates shown thereon?

The Witness: I didn't hear that question.

Mr. Boden: They include all of the docks and rates shown on this page, whether the rates differ or not?

The Witness: Yes, sir. Pages 3 to 29, inclusive, show precisely the same character of information with respect to the average short tariff and shortest tariff route mileages, the rates in effect on large and fine coal prior to May 1, 1939, the reduced rates established on large and fine coal on May 1, 1939, from each of the Wisconsin dock points named to the other 20 representative Wisconsin points which I have used, and the per cent that the present large and fine coal rates from such docks to such representative points are of the 23922 scale.

Page 30 of this exhibit presents a recapitulation of the information which is contained in the preceding pages. On this page I have shown the name of each of the 21 representative Wisconsin points which are used in such exhibit. I have also shown the present large and fine coal rates from

the Wisconsin docks to each of such 21 representative points, and the average of both the large and fine coal rates from [fol. 1488] such docks to such points. I have also shown the average short tariff and shortest tariff route mileage from such docks to each of such points and the per cent that the present large and fine coal rate from such docks to each of such 21 points is of the 23922 scale, based both upon the average distance over the short tariff routes and upon the average distance over the shortest tariff routes.

From this page of such exhibit it will be found that, based upon the average distance over the short tariff routes, the present rates on large and fine coal from the Wisconsin docks to the 21 representative Wisconsin points shown range from 74.4 to 97.8 per cent of the 23922 scale, and to all of such points average but 86.4 per cent of such scale.

As was shown in columns M and O, page 1 of my Exhibit No. 24, the present rates from the Illinois groups and mines as a whole, to the 12 representative suspended Northern Illinois points used by the railroads in their rate and mileage exhibits in these proceedings average 90 per cent of the 23922 scale, and the suspended rates from such groups to such representative points average 93 per cent of such scale. As the present rates from the Illinois mines to the Northern Illinois territory involved in these proceedings average 90 per cent of the 23922 scale, or 4 percentage points higher than the present rates from the Wisconsin docks to points in Wisconsin which, as I stated, average but 86 per cent of such scale, it is difficult to understand what basis [fol. 1489] there is for the railroads' contention that the maintenance of the present rates from the Illinois mines to such Northern Illinois territory menaces or jeopardizes in any way the rate adjustment on coal in Wisconsin. Particularly is this true when it is remembered, as I have pointed out, that the present rates from the Illinois mines to points in Wisconsin are on an improper basis and are improperly related to the rates from the Wisconsin docks to points in such state, even if such relationship is measured by the increased differences which were prescribed between the rates from the Illinois mines, on the one hand, and such docks, on the other, in the Lake Dock Coal Cases.

Exam. Trezise: We will adjourn until two o'clock.

(At 12:30 p. m., recess taken until 2:00 p. m.)

AFTERNOON SESSION

The hearing was resumed pursuant to recess.

2:00 P. M.

Exam. Trezise: Gentlemen, when you are ready we will begin. Proceed, Mr. Stadell.

HARRY A. ROZENE resumed:

Direct examination (Continued).

By Mr. Stadell:

Q. Have the railroads, either through a 13th Section proceeding or otherwise, to your knowledge, made any effort [fol. 1490] to have the rates on coal from the Wisconsin docks to points in that state, which were reduced to their present level on May 1, 1939, in compliance with the order of the Public Service Commission of Wisconsin in its Docket 2-R-633, increased back to the level which was in effect prior to May 1, 1939?

A. No. They published such substantially reduced rates on that date and they have been in effect since that time, or more than four years. It would therefore appear that they intend to continue such rates in effect for the future on the level which is indicated in my Exhibit No. 34. I know of no reason, therefore, why such rates should not provide a proper yardstick to be used in measuring the rates from the Illinois mines to points in Wisconsin, or from such mines to points in Northern Illinois. As a matter of fact, the Interstate Commerce Commission has generally recognized that a higher level of rates should be prescribed and maintained between points in Wisconsin than between points in Illinois, or from points in Illinois to points in Wisconsin.

In the General Class Rate Cases, Docket No. 15879, 164 ICC 314, and Docket No. 17000, Part 2, 204 ICC 595, the Commission prescribed class rates for application within Illinois which were on a level approximately 22 per cent lower than the class rates which it prescribed for application between points in Western Trunk Line Zone 1, in which the [fol. 1491] major portion of Wisconsin is located.

Q. Now, in its decision in Docket No. 2-R-633, to which you referred, did the Wisconsin Public Service Commis-

sion prescribe the specific rates which you have shown in your Exhibit No. 34, from the Wisconsin docks to points in Wisconsin, or did it prescribe a mileage scale and a method of computing distances to be used in arriving at such rates?

A. It prescribed a mileage scale on large coal and a lower mileage scale on fine coal. Its decision required that to any given destination the rate to be established should be arrived at by the application of these scales to the shortest possible distance from the dock point nearest to such destination. Such decision further provided that after having established the rate to each Wisconsin point, based upon such mileage scales and the shortest possible distance from the nearest dock point, that the railroads could then apply the same rates to such destination from all further distant dock points from which the shortest possible distance was not more than 50 per cent greater than from the nearest dock point to such destination.

In other words, the rates from such farther distant docks could be established on the same basis as from the nearest dock, provided that the shortest possible distance from such farther distant docks did not exceed the shortest possible distance from the nearest dock to the destination in- [fol. 1492] volved by more than 150 per cent. The distance over the tariff routes over which the coal moves from such dock to such points would, in many cases, be greater than the shortest possible distance used in arriving at the rates from such dock to such point.

Even though the rate from the nearest dock to a given point might reflect the full scale, it is obvious that establishment of the same rate from farther distance docks from which the shortest possible distance was 50 per cent greater, would result in rates from such farther distant docks that were but 50 per cent of the prescribed scales.

Furthermore as the distance over the tariff routes from such farther distant docks would be longer in many instances than the shortest possible distance used to determine whether the same rates should apply from such docks as from the nearest docks, it is apparent that the distance over which the coal actually moves from such farther distant docks would exceed that from the nearest dock by more than 150 per cent in many cases, and that the rates from such docks would therefore be less than 50 per cent of the prescribed scales, if measured by the tariff route distances.

I would also like to point out that in accordance with the decision of the Wisconsin Commission in its Docket 2-R-633, rates on fine coal substantially lower than those on large coal were established from the Wisconsin docks to points generally throughout Wisconsin, while there are very few [fol. 1493] rates on fine coal from the Illinois mines to points in Wisconsin lower than those on large coal. While, as stated by Mr. Flansburg, such decision did not require the railroads to equalize the rates from the farther distant docks with those from the nearest docks to any given destination in Wisconsin, nevertheless, the Wisconsin Commission knew that the railroads would voluntarily establish such equalization, because they had been required to maintain such an equalization for from 15 to 20 years prior to May 1, 1939, by order of that Commission in prior cases.

Q. Where do the Wisconsin docks obtain the coal which they sell at and ship to points in Wisconsin?

A. They purchase such coal from mines in Ohio, Pennsylvania, West Virginia, Virginia, Eastern Kentucky, and Tennessee, and it is shipped during the spring and summer months by rail to ports on Lake Erie, thence by boat over the Great Lakes to the port cities on Lake Michigan and Lake Superior at which such docks are located. Such coal is unloaded from the boats and stored by dock companies. When orders are received during the following fall and winter from an industrial plant or other consumer at some point in Wisconsin, the tonnage required to fill such order is loaded by the dock company receiving it into railroad cars and shipped to the point in Wisconsin at which such plant or consumer is located. The movement from such docks to destinations in Wisconsin is intrastate, and the intrastate rates prescribed by the Wisconsin Public [fol. 1494] Service Commission, would apply.

Q. Are the boat companies which transport this coal from the Lake Erie ports to the Lake Michigan and Lake Superior docks, common or contract carriers?

A. They are contract carriers.

Q. Have you any information with respect to the total number of tons of coal received at points in Wisconsin during recent years, and the proportion of such tonnage that was shipped from the Illinois, Indiana, and Western Kentucky mines, and the proportion that was shipped from the mines in the eastern states which you previously named.

both over all rail routes and over the rail and lake routes through the Wisconsin docks?

A. Yes. In 1937, 9,127,871 tons of coal were received at points in Wisconsin, and by the Wisconsin docks. Of this total, 852,403 tons moved from mines in the eastern states, all rail, and 6,190,900 tons moved from such eastern mines by rail and lake routes to the Wisconsin docks. The total from the eastern mines was 7,043,303 tons or 77 per cent of the total of 9,127,871 tons. The tonnage from the Illinois, Indiana, and Western Kentucky mines was 2,084,568 tons or 23 per cent of the total. In 1938, 8,846,671 tons of coal were received at all points in Wisconsin, and by the Wisconsin docks.

766,109 tons of this tonnage moved via all rail routes from the eastern mines; while 6,299,879 tons moved via the rail and lake routes from such mines to the Wisconsin [fol. 1495] docks. The total from the eastern mines via both the all rail and the rail and lake routes, was 7,065,988 tons, or 80 per cent of the total from all sources of 8,846,671 tons. Of this latter total, the Illinois, Indiana, and Western Kentucky mines shipped 1,780,683 tons or 20 per cent. In 1940, 9,682,954 tons of coal were received at all points in Wisconsin and by the Wisconsin docks. Of this total, 827,320 tons moved via the all rail routes from the eastern mines, and 6,576,483 tons moved via the rail and lake routes from such mines to the Wisconsin docks. The total from the eastern mines was 7,403,812 tons or 76 per cent of the total of 9,682,954 tons from all sources. Of this latter total, the Illinois, Indiana, and Western Kentucky mines shipped 2,279,142 tons, or 24 per cent.

The tonnage figures which I have given for the movement via the all rail routes from the Illinois, Indiana, and Western Kentucky mines were taken from the reports of the Illinois-Indiana Coal and Coke Committee, and the tonnage figures via the all rail routes from the eastern mines were taken from the reports of the Ohio Bureau of Coal Statistics. These two reports are prepared by committees of the railroads which serve the mines in Illinois, Indiana, and Western Kentucky and in the eastern states. The figures which I have given for the tonnage via the rail and lake routes were taken from the annual reports of the Chief of Engineers, United States Army. I am unable to give this information for later years because the United [fol. 1496] States Army engineers have refused to make

public the information showing the number of tons of coal moved via the rail and lake routes for the years since 1940.

Q. What, if anything, have you to say with respect to the use of the Holmes and Hallowell scale as a yardstick for measuring the propriety or lawfulness of the rates involved in these proceedings?

A. Aside from the mere comparison between the present and suspended rates from the Illinois mines to the Northern Illinois points involved with those from such mines to the comparative points in dollars and cents per ton, the only other yardstick that I can find that the railroads have used in their attempted justification of the increases proposed in the Illinois rates in these proceedings is the Holmes and Hallowell scale. I might add an exception there, that Mr. Kuhls made some comparisons other than with the Holmes and Hallowell scale. We have consistently condemned the use of that scale as a yardstick for measuring the lawfulness or propriety of the rates from the mines of our member companies, particularly when such scale was used to measure the rates for short hauls versus long hauls. That scale was prescribed in Holmes and Hallowell versus Great Northern Railway Company, 69 ICC 11, to apply from coal docks located at Duluth and various other ports on Lake Superior to destinations in Minnesota, South Dakota, and North Dakota. Its construction and gradation reflect the [fol. 1497] peculiar conditions which prevailed and still prevail in that particular territory and which surround the movement of the traffic from the points to the destinations in the states to which it was prescribed to apply.

While the rates arrived at by use of this scale were established to apply from all of the docks on Lake Superior to points in Minnesota, North Dakota, and South Dakota, the Commission's decision provided that such rates should be arrived at by the application of such scale to the shortest possible distance from Duluth only, to such points, computed over not to exceed three lines of railroad.

As found by the Commission in such case, the transportation conditions over the railroads between the Lake Superior docks and St. Paul-Minneapolis, a distance of about 160 miles, were quite favorable, particularly in comparison with the adverse transportation conditions and lower density of traffic which prevailed in the territory between St. Paul-Minneapolis and points beyond in Minnesota, South Dakota,

and North Dakota, to which such scale was prescribed to apply. As the Commission also found, coal from Duluth and the other Lake Superior docks moved to St. Paul Minneapolis in open top cars in almost trainload quantities, while to points in the territory beyond St. Paul Minneapolis, it moved generally in box cars which were loaded to an average of but about 35 tons each. As previously stated, the scale prescribed reflected these conditions, and while such [fol. 1498] scale is, therefore, on a fairly reasonable basis for hauls up to 160 miles, it grades up sharply beyond that distance and is very high for hauls of 250 miles or more.

It is therefore, in our opinion, wholly improper to use this scale to measure the rates for a haul of 400 miles, with those for a haul of 150 miles to 200 miles or less, because this results in the rates for such short hauls being measured by the comparative low and reasonable portion of such scale, and in the rates for the longer hauls being measured by the high and increased graded portion of such scale. Furthermore, as I have previously stated, the rates established from the Lake Superior docks to points in Minnesota, South Dakota, and North Dakota, were based upon the use of this scale as applied to the shortest possible distance which could be obtained by the use of not more than three lines of railroad between such origins and destinations. Such rates were then established to apply for the much longer distances over the tariff routes of the railroads over which the shipments from such docks to such points actually moved without regard to the much longer distances over such routes.

When measured by the distance over the tariff routes over which the coal from such docks to such points actually moves, or by the distance over the short tariff routes from such docks to such points, it will be found,—and it was found by the Commission in Lignite Coal from North Dakota, 89 I.C.C. [fol. 1499] pages 730, 731, and 126 I.C.C. 250—that the rates from the Lake Superior docks to such points are considerably below the Holmes and Hallowell scale, and in many cases are but approximately 80 per cent of that scale when measured by the distance over such tariff routes over which the shipments actually moved.

(Exhibit No. 34, Witness Rozene, received in evidence.)

By Mr. Stadell:

Q. Have you prepared exhibits showing the average distance over the shortest tariff routes and the present rates on large and fine coal from the Lake Superior docks to representative destinations in Minnesota and South Dakota?

A. Yes. I have prepared one exhibit consisting of 24 pages, and another exhibit consisting of 9 pages, in which I have shown the average mileages over the shortest tariff routes from the various Lake Superior docks to destinations in South Dakota, destinations in Minnesota, and destinations in Iowa. My Exhibit No. 35 shows the name of each of the representative points in Minnesota and South Dakota which I have used, the average shortest tariff route mileage from each of the Lake Superior dock origins to each of such points, an explanation of the route over which such mileages apply, and the present rates on large and fine coal from such docks to each of such points. The heading on the top of page 1 of this exhibit indicates that the average distances shown are via the short tariff routes. It should be corrected to read [fol. 1590] via shortest tariff routes.

Q. The title page of that exhibit indicates that the average mileages are over the shortest tariff routes, doesn't it?

A. Yes.

Q. You merely want to correct the heading on page 1 so as to indicate they are over the shortest instead of the short tariff routes as is now shown?

A. That is correct, yes.

(Exhibit No. 35, Witness Rozene, received in evidence.)

The Witness: My Exhibit No. 36 shows the name of each of the representative Iowa points used, the average shortest tariff route mileage and the present rates on large and fine coal from such docks to each of the Iowa points shown. The heading on page 1 of this exhibit should also be corrected to indicate that the average distances shown are via the shortest instead of the short tariff routes.

(Exhibit No. 36, Witness Rozene, received in evidence.)

By Mr. Stadell:

Q. Now, have you prepared a recapitulation of the information shown in these two exhibits, to show the percentage that the rates from the Lake Superior docks to the repre-

sentative Minnesota, South Dakota, and Iowa points are of the Holmes and Hallowell scale, when measured by the average distance over the shortest tariff routes from such docks [fol. 1501] to such points?

A. Yes, this information is contained in my Exhibit No. 37. Such exhibit, which consists of four pages, shows the name of each of the representative Minnesota, South Dakota, and Iowa points contained in my two previous exhibits, the average shortest tariff route distances from the Lake Superior docks to each of such points, the present rates on large and fine coal from such docks to such points, and the per cent that such rates are of the Holmes and Hallowell scale for the average distances over the shortest tariff routes.

It will be noted that to the Minnesota points the rates on large coal shown on pages 1 and 2 of such exhibit range as low as 84.7 per cent of such scale, and average 92.8 per cent of such scale. The rates on fine coal range as low as 77 per cent of that scale to Rochester, Minnesota, which is shown on page 2, and average but 87.4 per cent to all of the Minnesota points shown. The average of the large and fine coal rates to such points ranges as low as 82.2 per cent to Tyler, Minnesota, shown on the second page, and to all of the Minnesota points shown, they are 90.1 per cent of such scale.

To the 27 representative South Dakota points shown on page 3 of such exhibit, the large coal rates range as low as 81.4 per cent and average 87.2 per cent of the Holmes and Hallowell scale, while the fine coal rates range as low as 69.5 per cent, and average but 78.3 per cent of such scale for [fol. 1502] the average distance over the shortest tariff routes. The average of the large and fine coal rates from the Lake Superior docks to such South Dakota points range as low as 75.5 per cent, and average but 82.8 per cent of such scale.

To all of the representative points in Minnesota and South Dakota, the large and fine coal rates from such docks average but 88.3 per cent of that scale.

Exam. Trezise: In this interim, would you mind stating, Mr. Rozene, what you meant when you said that the Holmes and Hallowell scale should not be used as a measure, of what rates—you mean rates from mines to destinations?

The Witness: From mines in Illinois to destination.

Exam. Trezise: As a matter of fact, over and above all that you have said about the Holmes and Hallowell scale, the Holmes and Hallowell scale as prescribed, increased, as all other rates were increased, from the mines to destination, has no application on any traffic at the present time, isn't that true?

The Witness: As you have stated, it probably has not, but——

Exam. Trezise: Probably has not; it has none, has it?

The Witness: But I want to point this out, why we have increased the scale as we have shown it. The carriers have done it in their exhibits, and regardless whether you increase it 7½ cents or 15 cents, we are using like for like.

[fol. 1503] Exam. Trezise: Then what you mean is it was used as a sort of a measuring rule, not that that type of Holmes and Hallowell scale was ever applied or is applied at the present time on traffic or as a measure to determine what a reasonable rate would be, other than relatively reasonable?

The Witness: That is right. Now, one thing more I would like to point out——

Mr. Stadell: Did you understand that question?

The Witness: Yes, as I understand the question——

Mr. Vesey: Let us have the question read.

(Question read.)

Mr. Vesey: Now, as I get the Examiner's question, the question is this: is what you mean, the Holmes and Hallowell scale is a scale of rates not in effect on actual coal movements today, but that it could be used as a yardstick for the measuring of rate levels, is that it?

Exam. Trezise: For testing the size of other rates.

Mr. Vesey: Yes. Now, his answer is what?

The Witness: That we have used it for that purpose.

Mr. McElroy: Well, has the order in the Holmes and Hallowell scale been set aside by the Interstate Commerce Commission?

The Witness: No, not that I know of.

Mr. McElroy: It is carried today, that order, as a maximum thing?

[fol. 1504] The Witness: Yes, but the question is, as I understand it, whether the Holmes and Hallowell scale as I

have shown it here are the actual rates that applied on traffic moving from the lake docks.

Exam. Trezise: As increased to the same extent as the other coal rates have been increased, and the other coal rates are the rates from mines to destinations.

The Witness: Yes, and one of the main reasons why we are increasing this scale by 15 cents is because the rates in this territory from Illinois to the Northwest also were increased 15 cents.

By Mr. Stadell:

Q. Could you make a comparison, Mr. Rozene, with any sense to it, that would use the Holmes and Hallowell scale, increased 15 cents, to measure the Illinois rates by, and that scale increased 7½ cents to measure the Holmes and Hallowell territory by in this proceeding?

A. I could make that, yes.

Q. I say, could it make any sense?

A. You would get practically the same answer relatively.

Exam. Trezise: Well, every time a general increase is made in the rates from the mines to destinations, the Holmes and Hallowell scale becomes relatively less, doesn't it?

The Witness: Yes.

Exam. Trezise: It would, of course, if the rates from the mines were increased 15 cents and the Holmes and Hallowell [fol. 1505] scale, the increase would be only half as much?

The Witness: Yes, while we are down to the basis of the Holmes and Hallowell scale at that rate.

Exam. Trezise: Pardon me for interrupting your testimony.

Mr. Stadell: Will you proceed with your testimony?

The Witness: To all of the representative points in Minnesota, South Dakota, and Iowa, the average of the present large and fine coal rates from the Lake Superior docks is but 89 per cent of such scale.

In some cases the Interstate Commerce Commission has prescribed rates from mines in Illinois to points in Iowa, for example, which were approximately 85 per cent of the Holmes and Hallowell scale, apparently on the theory that the rates from the Lake Superior docks to points in Minnesota, South Dakota, and North Dakota were 100 per cent of such scale, and that the transportation conditions surrounding the movement of coal from the Illinois mines to

points in Iowa, and so forth, were so much more favorable than in the territory in Minnesota, South Dakota, and North Dakota, in which such scale was prescribed to apply, as to justify rates from such mines to the destinations involved, at least 15 percentage points lower, as measured by such scale, than those in effect in such Holmes and Hallowell territory. However, as indicated by my Exhibit No. 37, the rates actually in effect in the Holmes and Hallowell territory for the distances over the routes over which the traffic [fol. 1506] actually moves, average but 88.3 per cent of the Holmes and Hallowell scale, and to many points in such territory they are a much lower percentage of such scale.

For the reasons stated, it is our position that it is wholly improper to attempt to measure the rates from the Illinois mines to the representative suspended or comparative points by use of the full Holmes and Hallowell scale, and by use of the inflated distances over the circuitous short tariff routes, which I have previously pointed out, particularly from Southern Illinois, as the railroads have done in their exhibits. Even if the theory of the Commission that the rates on coal from Illinois to Iowa should be approximately 15 per centage points lower, as measured by the Holmes and Hallowell scale, than are the rates in Holmes and Hallowell territory, is accepted as proper, it would seem obvious that such rates should be made at least 15 per centage points lower than the actual rates in effect in Holmes and Hallowell territory, rather than 15 percentage points lower than the full Holmes and Hallowell scale, which is, as shown on page 3 of my Exhibit No. 37, approximately 12 percentage points higher than the present rates from the Lake Superior docks to destinations in Minnesota and South Dakota, which average but 88.3 per cent of such scale. This would be too high a basis, however, to apply from the Illinois mines to points in Northern Illinois, because, as I previously stated, the Commission in the General Class [fol. 1507] Rate Case prescribed class rates within Western Trunk Line Zone 1, in which Iowa is located, that are approximately 22 per cent higher in level than are the class rates which it prescribed for application in Illinois, because of the more favorable transportation conditions in Illinois than in Iowa.

By Mr. Stadell:

Q. What you mean is that the 85 per cent of the actual level of the rates in the Holmes and Hallowell territory would be too high a basis to establish in Illinois?

A. Yes, sir. Coal moving from the Lake Superior docks to points in Minnesota, South Dakota and North Dakota moves for a short distance in Western Trunk Line Zone 1, and for the balance of the distance in Western Trunk Line Zones 2 and 3. In the Western Class Rate Case, Docket No. 17000, Part 2, the Commission prescribed rates in Western Trunk Line Zone 2 which were approximately 39 per cent higher than the class rates which they had previously prescribed for application between points in Illinois, and it prescribed class rates for application in Western Trunk Line Zone 3 which were approximately 50 per cent higher in level than were those which they had prescribed between points in Illinois.

(Exhibit No. 37, Witness Rozene, received in evidence.)

Exam. Trezise: Mr. Rozene, right there, while you are talking about Iowa, have you checked that up to determine whether or not it is a fact that the rates from Illinois to [fol. 1508] Iowa over the shortest tariff routes are higher than the rates from the Head-of-the-Lakes to the same destination territory over these shortest tariff routes for like distances?

The Witness: You mean all of Illinois to Iowa?

Exam. Trezise: I will limit it to Fulton County, Fulton-Peoria group. Well, I thought you knew that.

The Witness: I will know in a minute. The present rates from Lake Superior docks to destinations in Minnesota average 96½ per cent of the Midland scale.

Mr. Stadell: That isn't what he asked you.

The Witness: Read the question.

Exam. Trezise: All right, finish the answer. 96 per cent you say. I see where you are coming out.

The Witness: I would rather answer your question before I go any further.

Mr. Stadell: Go ahead and put that in if you have got it and then answer his question, which as I understand it, was, aren't the rates from Illinois to Iowa, prescribed in the Midland cases, on a higher measure prescribed in the Holmes and Hallowell scale than the rates from the Lake

Superior docks into the Holmes and Hallowell territory, even if you consider equal distances?

Exam. Trezise: Over the shortest tariff routes.

Mr. Stadell: Over the shortest tariff routes. Don't you know that from your participation in the South Dakota [fol. 1509] cases, Mr. Rozene?

The Witness: My exhibit shows that they are.

Mr. Stadell: Why don't you say yes, then?

Exam. Trezise: I just wanted to confirm it, that is all. Thank you.

By Mr. Stadell:

Q. Is the Northern Illinois territory involved in these proceedings an important one from a market standpoint for the mines of your member companies, that is, the member companies of the Central Illinois Coal Traffic Bureau?

Mr. Wilkinson: Are you asking that as an expert who has sold coal or just general knowledge?

Mr. Stadell: General knowledge on tonnages, Mr. Wilkinson. We are not submitting him as an expert on sales of coal.

The Witness: Yes, but it has become a much more important market in recent years than formerly because of the substantial loss which such mines have suffered during the past several years in the tonnage which they ship to points in other states.

By Mr. Stadell:

Q. Have you any information with respect to the decline in the quantity of coal shipped by the mines in the Southern Illinois group, for example, to markets outside the state of Illinois during the past several years?

A. Yes.

Q. Will you give us that information?

[fol. 1510] A. Several years ago the Southern Illinois mines enjoyed substantial markets for their coal in Minnesota, South Dakota, Michigan, Iowa, Wisconsin, Nebraska, Indiana, and Missouri. However, during recent years there has been a very substantial decline in the quantity of coal shipped by them to points in such states. This decline has been due to the displacement of coal from the Southern Illinois mines by other mines, by coal moving by

truck, and by substitute fuels, such as natural gas, fuel oil, and so forth.

As illustrative, the quantity of coal shipped by the Southern Illinois mines to destinations in South Dakota declined from 197,623 tons in 1923 to 100,345 tons in 1941, a loss of 97,278 tons or 49 per cent. In 1924 the Southern Illinois mines shipped 213,338 tons of coal to such state. This declined to 100,345 tons in 1941, a loss of 112,993 tons or 53 per cent. The tonnage shipped by the Southern Illinois mines to points in Nebraska in 1941, represented a loss of 80 per cent as compared with the tonnage shipped by them to points in such state in 1923; and a loss of 85 per cent as compared with the tonnage shipped by them to points in such state in 1924.

The tonnage shipped by the Southern Illinois mines to Minnesota in 1941 represented a loss of 81 per cent as compared with the tonnage shipped by them to points in such state in 1923.

The tonnage shipped by such mines to destinations in Iowa [fol. 1511] in 1941 represented a loss of 52 per cent as compared with the tonnage shipped by them to points in that state in 1923, and a loss of 60 per cent as compared with the tonnage shipped by them to points in such state in 1924.

The quantity of coal shipped by the Southern Illinois mines to points in Michigan declined from 321,649 tons in 1923 to 19,254 tons in 1941, a loss of 302,395 tons or 94 per cent, and the loss 1941 compared with 1924 was 89 per cent.

The quantity of coal shipped by the Southern Illinois mines to destinations in Indiana declined from 1,526,631 tons in 1923 to 79,002 tons in 1941, a loss of 1,447,629 tons or 95 per cent.

with respect to the origin, destination and route of such shipments.

[fol. 1512] Furthermore, the United States Bureau of Mines, Department of Interior, in its Mineral Year Book Reports has referred to 1923, as the first normal year after the last World War. I have used the tonnage figures for 1941, because, as everyone knows, the United States entered the second world war on December 7, 1941, and because of its participation in such war and the tremendously increased demand for coal since that time, the tonnage produced or shipped since that time could hardly be considered as normal.

Because of the large loss which they have suffered in all of their markets outside of the state of Illinois, the Southern Illinois mines are in no position to lose any of the tonnage which they are still able to ship to the Northern Illinois destinations involved in these proceedings. Since 1923 one hundred and one mines have been closed down and abandoned in the Southern Illinois group. These mines had an annual peak production of 26,918,666 tons.

Q. Were the Southern Illinois mines able to operate full time during the more normal years of 1938, 1939 and 1940?

A. No. Full time under the wage agreement entered into between the miners union and such mines would have meant five days per week, 52 weeks per year, or 260 days per year. In 1938 the Southern Illinois mines operated an average of but 137 days. In 1939 they operated an average of but 150 days, and in 1940 they operated an average of 169 days.

[fol. 1513] For all of the reasons which I have stated, we are opposed to the increased rates which are under suspension in these proceedings from the mines of our member companies to the Northern Illinois points involved, and the attempt of the railroads, particularly, the Chicago, Milwaukee, St. Paul and Pacific Railroad and Southern Railway, which serve none of the mines in Illinois but serve mines in Indiana only, to further reduce the level of the rates from the Indiana mines to such points, notwithstanding the fact, as shown by my exhibits, that the level of the present rates from the Indiana mines to the Northern Illinois territory involved is already substantially below the level of the present rates from the Illinois mines.

We request the Illinois and Interstate Commerce Commissions to find the increases proposed by the railroads in the rates from the Southern Illinois and other groups repre-

sented by us, to the Northern Illinois points involved, unlawful and unjustified, and we request the Interstate Commerce Commission to dismiss the pending 13th Section petition, just as it did in the prior 13th Section petition, just as it did in the prior 13th Section case, Docket No. 23130.

[fol. 1514] Q. Now, you referred a moment ago to the average level of the rates on coal from the Lake Superior docks to destinations in Minnesota, I believe it was, as measured by the Midland scale. Have you an exhibit which shows the average shortest tariff-route mileages from the Lake Superior docks to points in the Holmes and Hallowell territory and the level of the present rates from those docks to those points as measured by those average distances and the Midland scale?

A. Yes, I have.

Mr. Stadell: This will be Exhibit No. 38.

(Exhibit No. 38, Witness Rozene, marked for identification.)

By Mr. Stadell:

Q. Will you please explain Exhibit No. 38, Mr. Rozene, in so far as any explanation is necessary.

A. Exhibit No. 38 consists of three pages and is a recapitulation of rates and distances shown in my Exhibits Nos. 35 and 36. This exhibit shows the present rates from Lake Superior docks to destinations in Minnesota, South Dakota and Iowa, together with the shortest tariff route mileage from Lake Superior docks to such destinations in the three states mentioned; and it also compares the present rates from such docks to such destinations as measured by the Midland Electric scale.

Page 2 of the exhibit shows that the present rates from the Lake Superior docks to destinations in Minnesota average 96½ per cent of the Midland scale, and to 27 points in [fol. 1515] South Dakota the present rates from the docks average 92.3 per cent of the Midland scale.

The third page of the exhibit shows that the present rates from the Lake Superior docks to 43 destinations in Iowa average 93.9 per cent of the Midland scale. To the three states combined the present rates from the Lake Superior docks average but 95 per cent of the Midland scale.

(Exhibit 38, Witness Rozene, received in evidence.)

By Exam. Trezise:

Q. Would you say that the distances that you have used from the Head-of-the-Lakes to these destinations are any more over the long single line routes than are the rates from Illinois to these destinations? The distances are figured the same way, aren't they?

A. You mentioned the long single line distance?

Q. I did, yes. I say, are they more over the long single line routes, from one origin than from the other?

A. Do you mean from Illinois or do you mean from the docks?

Q. I mean from the docks and from Illinois, both. If you figured them the same way, wouldn't you have to reach the conclusion that one is no more the long single line route than the other? I am not trying to give you the answer, but I am just wondering if that is so.

A. I don't know what you mean by the single line route.

Q. You know what a long single line route is, don't you?

A. I know what a route is over one railroad. I would say when you mention single line route, you mean a route over [fol. 151] a single line railroad.

Q. Do you understand my question sufficiently to answer it?

A. I don't believe I do. You asked me, if I understand you, if there are long single routes from Illinois as there are from the docks, is that right? Is that it?

Q. Yes. I think that would be the question. Has any one a copy of the South Dakota case here? You can read that in the decision, in response to the exhibits you have just put in, or similar ones, and therefore your comparisons, so the Commission said, are no good. I am asking you whether you consider the criticism is proper of your exhibits?

A. I have attempted here to measure the rates in dock territory by the rates that were prescribed in the Midland case, by using the Midland scale as a yardstick.

Q. That was over the shortest tariff route?

A. Shortest tariff route, yes, sir.

Q. And you figured the rates over the shortest tariff routes from the Head-of-the-Lakes too, didn't you?

A. Yes, sir.

Q. Then I asked you, if the distances that you used from the Head of the Lakes are any more over the long single

line routes than you could term the rates and method of figuring from Illinois to these destinations?

A. Well, I don't remember just what the mileages were in the South Dakota case. We have some long single line [fol. 1517] routes up as far as Sioux Falls, I think, from Southern Illinois, and there are long single line routes from the docks into Sioux Falls.

Q. Then you have long single line routes from both origins, haven't you, because you figure the distances the same way?

A. Yes.

Exam. Trezise: We will pass that right there.

Mr. Vesey: May I suggest a recess, Mr. Examiner?

Exam. Trezise: I think this would be a good time to have a short recess.

Mr. Stadell: I was just going to offer the exhibits.

Exam. Trezise: It is understood on the record, as agreed before, that when the exhibits are identified and described they will be shown as received in evidence, unless they are later rejected.

(A recess was taken.)

Exam. Trezise: Proceed, Mr. Stadell.

By Mr. Stadell:

Q. Could you give us the total number of tons of coal that was originated by all railroads serving the Princeton, Indiana, group in 1941?

A. In the Princeton Group?

Q. Yes, as a whole.

Mr. Wilkinson: I object to that. It is immaterial how much coal was originated in the Princeton Group. The issue here is the rates to certain destinations in Northern Illinois and Beloit, Wisconsin.

[fol. 1518] Exam. Trezise: Oh, I think that we would let him show that. He may want to divide it up. I don't know.

Mr. Wilkinson: Well, if he divides it up, it may have some pertinency, the production.

Mr. Stadell: It isn't the production. What I am asking for is the total commercial coal tonnage.

Mr. Cardy: What year was that, Mr. Stadell?

Mr. Stadell: 1941.

Exam. Trezise: Go ahead.

The Witness: Yes. For the year 1941 the total commercial tonnage which originated in the Princeton-Ayrshire Group amounted to 4,941,381 tons.

By Mr. Stadell:

Q. Now, can you tell us how much of that originated at origins on the Southern Railway?

A. Yes, 357,295 tons.

Q. Now, can you tell us how much of that originated at origins on the Algers, Winslow & Western, and of that total give us the tonnage that was delivered by that road to the Southern Railway and to any other railroad.

A. In 1941 there were 2,129,206 tons that originated on the AW&W. Of this amount, 2,020,842 tons was interchanged with the New York Central and 108,364 was interchanged with the Southern Railway.

Q. So that if we add that tonnage interchanged between the AW&W and the Southern Railway and the Southern [fol. 1519] Railway tonnage, we would have the total commercial coal tonnage that was originated or interchanged with the Southern Railway in that group in that year?

A. Yes, sir.

Q. Now, have you a few corrections that you wanted to make on some of your exhibits?

A. Yes, I have. On Exhibit 27, page 3, the footnote at the bottom of the page reads, "The rate from IC mines is 217." It should read 214. In Column C, line 8, the route symbol should read N-15.

Q. What line was that?

A. Line 8.

Q. N-15?

A. Yes, instead of N-52.

Mr. McElroy: That is on the same page?

The Witness: Yes, sir. Then on line 24 change the route symbol to read N-15 instead of N-52. Make a similar change at line 32, at line 39, at line 43, line 46, 50, 51, and 53.

On my Exhibit No. 29, page 6, line 16, column C, change the 278 to read 184; and column D, change the 184 to read 199.

Mr. Stadell: That is suspended rates?

The Witness: Yes, sir; and column E, change from 199 to 278. That is all the changes there.

On Exhibit No. 34, on page 2, column 1, line 23, I don't want you to make any changes in that. There is [fol. 1520] evidently an error in there, but I will have to check it up.

Mr. Stadell: An error in what?

The Witness: In the $1.43 rate. I will have to check it up.

Mr. Stadell: You are going to check that a little later and make any correction, if there is a correction to be made?

The Witness: Yes. Then on page 30 of the same exhibit, the last column, opposite Fort Atkinson, I show 81.5. It should read 80.8. Then opposite Beloit, four lines down, where it reads 87.8, it should read 87.6. It was evidently typographical errors because there is no change made in the total at the bottom of the page. That is all I have.

Exam. Trezise: Before you start cross-examination are you ready for cross?

Mr. Stadell: Yes.

By Exam. Trezise:

Q. Would you give us a little better idea, Mr. Rozene, of what you have in mind, and would you say that this is true, in calculating your distances from Southern Illinois to Northern Illinois and to the so-called suspended points, do you think that the carriers should short-haul themselves under the suspended rate routes to Northern Illinois, or else they should the shorter routes not now published in their coal tariffs in determining the rates to apply from the origins to these so-called suspended destinations? Which of those do you think should be done?

[fol. 1521] A. Well when you said shorter routes, Mr. Examiner, before I answer your question, I would like to know what you mean by the shorter routes.

Q. In Exhibit 30 you have a route that is partly by a red line and partly by a blue line and that is not a tariff route, as I understand.

A. That is correct.

Q. And you think that the originating carrier should short-haul itself by turning it over to an intermediate carrier and then the originating carrier possibly get it back at some subsequent junction point, in order to make a shorter route, and short-haul itself? Do you think that the carriers should be required to do that, if there is any

authority for doing it, or do you think that we should just use the distance over such a route as that not now published in the coal tariffs in determining what the rate should be from the origins in Southern Illinois to these Northern Illinois destinations?

A. Well, as I pointed out in my direct testimony, Mr. Examiner, we are not asking the carriers to short-haul themselves on any of this traffic. But we are objecting to having our rates measured by the use of these long, unnecessary circuitous routes. Now, the rates could probably be made on some constructed basis, but we wouldn't expect the carriers to haul it over those constructed routes.

Q. Well, if that were done from Illinois, and of course, [fol. 1522] the same thing would have to be done from Indiana and Western Kentucky—you would agree to that, wouldn't you?

A. Oh, yes, we would be willing to compare like for like. Now, if there should be unduly circuitous routes in Indiana as we have here in Illinois, we would be willing to go along on the same basis from Indiana.

Q. So we are in this position. You have shown your shortest tariff routes from origin to destination, but you would discard them and in lieu thereof take a constructive distance, if you want to call it that, in determining what the rate should be in all instances where the route that is published in the tariff is appreciably longer than the shortest route that you have calculated here, is that right? You don't propose to use the shortest tariff routes because you suggest other routes, that is true; isn't it?

A. Well, the shortest tariff routes have the same inflation as do the short tariff routes.

Q. That is right, and I am trying to get to the point, what do you call circuitous, how much, what percentage?

A. Oh, 15, 20, 25, 30 per cent.

Q. Would you say that the illustrations that you have given in Exhibit 30 represent such a circuity?

A. Some of them would. I haven't checked them up to [fol. 1523] to what extent the amount of circuity is in those routes, but it was quite appreciable.

Q. Well, I am just wondering where the Commission would be if it undertook to pick out all instances of that kind, without some guidance from the competing lines. Of course, the question of rates in coal particularly is a matter of competition. If your method there is fol-

lowed from Illinois, it would have to be followed from the competing mines, as you say?

A. We wouldn't object to that.

Q. So where does that leave the Commission at the present state of the record? You wouldn't take the shortest tariff routes with the infirmities that you have referred to, and you wouldn't take the short tariff routes.

A. Well, I would suggest you take the mileages shown in column A of Robertson's Exhibit 4, which we talked about yesterday was the short rate making line. That is what was done in 23130, as I understand it, on these longer hauls, and it seems——

Q. Well, then, your Exhibit 30 would be out the window, except to show the extravagant routes that are used.

A. It is presented for that purpose, to show how unduly circuitous and how much inflation there is in the routes from Southern Illinois.

Q. All right. Then what you think the Commission ought to do is to take the distances, the short rate making route from each of these mines?

A. Well, as the record stands, that is about the only distances in the record at the present time, but if we get to a [fol. 1524] point where they want to use something else, we could use short circuit routes, so-called class rate formula.

Q. Yes, that could be done. That isn't in the record here as to what they are. You have to be practical about this. You know I have to write this case and I won't know what to do about it, and I am relying on you to tell me.

A. Well, if I had the time to do it and this proceeding permitted, then I would be glad to put the short circuit routes in this, the mileage over the short circuit routes in this case.

Mr. McElroy: From Indiana as well as Illinois?

The Witness: From Indiana as well as Illinois, and take that result and let the groups fall in where their mileages fall and give them a rate based on that mileage from each individual group.

Cross-examination.

By Mr. Bather:

Q. Mr. Rozene, in the adjustment of class rates in the state of Illinois the shortest route is used in figuring the class rates from point to point, is it not?

A. So I understand.

Q. Now, in your Exhibit 30 you make various comparisons of routes to Belvidere. Now, prior to the abandonment of the line of the North Western Railroad between Sycamore and Belvidere, the mileage was somewhat shorter, wasn't it?

A. 50 miles shorter via that route.

[fol. 1525] Q. So that today instead of moving the traffic through DeKalb, Sycamore and Belvidere, it has to move through West Chicago?

A. The traffic would have to move that way, but if you reconstructed the mileage it would probably move through Rockford in order to get the short distance. No doubt the traffic moves via West Chicago.

Q. So that by the abandonment of that line between Sycamore and Belvidere, the mileage from Illinois mines was increased, whereas from Indiana, where the traffic moved through Proviso, there was no increase in the distance?

A. I believe that is correct. If there was any increase, it probably wouldn't be over a mile.

Q. So that from Illinois Central mines, for example, to Belvidere, where is the traffic delivered to the North Western?

A. I think at Peoria.

Q. South Pekin, isn't it?

A. South Pekin, yes.

Q. And from CB&Q mines to Belvidere, where would the CB&Q deliver the traffic to the North Western?

A. At Sterling, Illinois.

Q. So that if you had a route to Belvidere in connection with the Illinois Central to Freeport, for example, that would also decrease the mileage as compared with the present routes over which the traffic moves?

A. Yes, sir, it would.

[fol. 1526] Mr. Bather: That is all.

By Exam. Trezise:

Q. Mr. Rozene, you said that you thought we might take the short rate-making route in determining what the distances is to be used, and you referred to Exhibit 4 of the carriers, and there is a part 3 that you mentioned. I find also part 4 is composed in the same manner, and I have some conception of what the distance might be from South-

ern Illinois to Chicago, and I find that to Chicago from Southern Illinois they show the shortest tariff route is 286 miles. I don't know how my figures worked out as to what the real facts are, as to what we might consider the short rate-making route from Southern Illinois to Chicago, but I searched about a bit and I found some little town down there in Southern Illinois that I don't believe there is any mine at, at all; nor a city, to Chicago is almost that distance, 272 miles. Now, would you advocate using a distance like that in determining what the rate would be? I am picking out Chicago as a destination because I haven't been able to calculate these distances. But this Part 4 seems to be made up in the same way as Part 3, and I concluded that, therefore, that would represent the distance that you have in mind, if we take 286 miles from Southern Illinois to Chicago as the basis upon which to determine what the rate is.

A. Well, that, of course, represents the shortest rate-making line that we are talking about.

Q. But from the nearest point in the group to Chicago?

[fol. 1527] A. No, not the nearest point—from the nearest group of mines.

Q. Now, do you think 286 miles would represent the average mileage from the nearest group of mines? What would that be on the Big Four?

A. That 286.6 miles shown in carriers' Exhibit No. 4 that you referred to is the distance from one mine on the Missouri Pacific in the Southern Illinois Group.

Q. But it is only one mine and it is not all of the Missouri Pacific mines, is that true?

A. That is true, it is one mine, moving via Mt. Vernon.

Q. And that is the nearest mine that can be found to Chicago in the Southern Illinois Group?

A. Yes, sir.

Q. Well, you wouldn't advocate figuring distances that way, would you?

A. I wouldn't get it down that fine.

Q. Well, I thought you got down that fine a while ago.

A. You said the short rate-making routes, as indicated in Section 3 of Exhibit 4, I believe you were talking about. Well, Mr. Examiner, that is what the Commission referred to in 23130, and if it should boil down to that fine a point, we wouldn't expect to base a rate on the nearest mine in a group. We would be basing it on an average from some important mine. We want to be reasonable. We don't

want to be unreasonable. But we do object to being loaded up with all of these long, undnly circuitous routes from [fol. 1528] Southern Illinois, when the other mines from Indiana have much shorter routes.

Q. All right. Now, how is that going to help the Commission in ferreting out these difficulties? What are we going to use in the record up to the present time—your shortest tariff routes? Do you know of any better guide that is in this record up to the present time than the shortest tariff routes?

A. Well, I believe that we could get a better adjustment from all the fields and more reasonable and more fair to everybody if we took the distances that I pointed out here, with reasonable modifications.

Mr. McElroy: What distances that you pointed out?

The Witness: In column A of Mr. Robertson's Exhibit No. 4.

By Exam. Trezise:

Q. And using 286 miles to Chicago, for example, and I thought you said you wouldn't go that far, and now you say you would.

A. Mr. Examiner, you would have to take a look at all of the fields in Indiana, Western Kentucky and Illinois and see what the result would be. If it was fair to all of them, I would say, use it.

Q. Now, you do agree that it would be unfair to take the nearest mine, one mine in the group, because the groups are of different sizes, and you admit, do you not, or isn't that what you are saying that it would be unreasonable, [fol. 1529] unfair, to take the nearest mine in the group and figure the distance over the shortest rou.

A. Well, if you do that with every group in Illinois and Indiana, we would go along on that basis.

Q. I am just trying to find out where you stand. I don't want to make you say anything. I thought you said a while ago you didn't think that was fair.

A. Well, you singled out Southern Illinois, and I wouldn't expect Southern Illinois to have their mileage measured from the nearest point in the group and then take an average from some other group. I am willing to go like for like.

Q. Then you would be in favor of taking, regardless of the size of the group, the nearest mine in the group and figure

the distance over the shortest line and deal out justice to every group in that manner?

A. Yes, sir. That would put the different groups on their proper relationship, as far as distance is concerned, to any given point.

Q. Well, would you prefer that method to figuring it over the shortest tariff routes, as you have in your exhibits?

A. Well, we can't agree to using our long circuitous routes from Southern Illinois. It penalizes Southern Illinois, which I have shown, and we think it is unfair that Southern Illinois should be pushed way down with a lot of long, unduly circuitous routes. Now, they could construct [fol. 1530] shorter routes and take out some of those longer routes. They wouldn't necessarily have to haul the traffic over those routes. It is a very simple matter.

I show you here to Belvidere, the first map on my Exhibit No. 30, there is an illustration of the route from the New York Central mines to Belvidere. They haul it from Danville and over to Peoria and around. It seems it would be sensible to haul it up to Proviso and give it to the IHB and send it then via the North Western, like the coal from Indiana moves. It just reduces our mileage 128 miles. We are loaded up with 128 miles which the carriers are using measuring our level of rates.

By Mr. Vesey:

Q. Isn't that the way it moves on page 3 of that same exhibit?

A. I don't know whether it moves that way.

Q. Look on page 3 of your exhibit. In part doesn't it move that same way?

A. Yes, it moves that way there. There are a lot of routes where they move up through Chicago, I don't know why they couldn't haul this one through Chicago.

By Exam. Trezise:

Q. Then you do think that the originating line should short-haul itself and turn it over to another railroad to haul a part of the way and then receive it back at some other junction point?

A. No, I don't expect them to do that, but we should be entitled to have our rates based on reasonable routes. We [fol. 1531] don't expect them to haul the traffic that way.

Q. Then you think that the rate should be determined from Southern Illinois to these Northern Illinois points by using these shorter distances that you have calculated here as the basis for calculating that rate, although the traffic may be hauled over the existing tariff route; that is what you say?

A. Yes, that is right.

Q. And if that be true, then it would be necessary also to calculate similar shorter routes from Indiana and from Kentucky in order that they might have the benefit of this same shorter distance for the calculation of your rates?

A. We wouldn't expect them to be—if our rates were based on constructive routes, we wouldn't expect Western Kentucky or Indiana would be based on anything else but the same method.

Q. Now, I am going to ask you this one question and I am not going to ask any more on that line. What method should the Commission use in calculating distances from the exhibits that are in the record to the present time?

A. Well, the only thing that is in the record at the present time would be these mileages pointed out in column A of Exhibit No. 4. That is the only thing of record that I know of.

Mr. Stadell: Haven't you got short tariff and shortest tariff mileages in the record, Mr. Rozene?

The Witness: Yes, but we are not advocating the use of the shortest tariff mileages on account of our long circuity, [fol. 1532] either in the short or the shortest. Of course, if we are going to be imposed with these routes, between the two of them, I would recommend the use of the shortest tariff routes.

Exam. Trezise: The two of which?

The Witness: Short or shortest. I would suggest we use the shortest tariff routes as I have computed it.

Exam. Trezise: Will you stay by that, Mr. Rozene?

The Witness: We are willing to take the routes as shown in our Exhibit 28 and Exhibit 29, with the modifications that I have pointed out in my Exhibit 30.

Exam. Trezise: All right. Any questions?

Mr. Wilkinson: I have some questions if the railroads don't want to do some cross examining, but I think it would be proper for me to follow the railroads in the proper procedure.

Exam. Trezise: Yes, the railroads should precede you, I imagine.

Mr. Zoll: Mr. Wilkinson, you are at liberty, as far as I am concerned, to go ahead if you would like to.

Mr. Biaett: I would like to defer my cross examination of Mr. Rozene until tomorrow morning, if I may, Mr. Examiner.

Exam. Trezise: Then we shall adjourn this evening until ten o'clock tomorrow morning.

(At 4:30 p. m., September 24, 1943, adjourned to 10:00 a. m., September 25, 1943.)

[fol. 1533]

Morrison Hotel,
Chicago, Illinois,
September 25, 1943.

The hearing was resumed pursuant to adjournment at 10:00 o'clock a. m.

Before R. N. Trezise, Examiner. F. B. McElroy, Illinois Commerce Commission

APPEARANCES:

As heretofore noted.

PROCEEDINGS

Exam. Trezise: All right, gentlemen, when you are ready, we will begin.

HARRY A. ROZENE resumed:

Cross-examination (Continued):

The Witness: Before we resume, I would like to make a statement, Mr. Examiner. Yesterday there was some discussion about distances over the various routes, such as short tariff and shortest tariff routes, and during the course of my testimony I pointed out the extreme circuity in a lot of these short tariff and also shortest tariff routes from Southern Illinois.

Exam. Trezise: That is in your Exhibit No. 30 particularly?

The Witness: Yes, sir, and you asked me, in view of the fact I had shown all these long circuitous routes, what routes would be used, and I stated we should use the mileages over

[fol. 1534] the short rate-making routes, which are shown in Column A to Robertson's Exhibit No. 4, and it was pointed out that in some instances these were not the short rate making routes.

So I made a study of that last night and I find that they are not the routes that I thought they were. So, therefore, I want the record to show that I am not advocating the use of these so-called short rate-making routes shown in Column A of Robertson's Exhibit No. 4.

Exam. Trezise: And the record so shows. I believe yesterday we concluded that you had discarded that.

By Mr. Stadell:

Q. Right to that point, the reason you are not advocating the use of the mileages over those routes as shown in Robertson's Exhibit No. 4 is because, as you stated, they are not the routes or the mileages which you thought they were at the time you testified?

A. That is correct. However, that leaves the mileages over the short and the shortest tariff routes in the record. Now, so far as the record shows, and so far as I know, there are only two sets of mileages in the record, over the short tariff routes as the railroads have computed them, and over the shortest tariff routes, which method I have used.

Exam. Trezise: That is not completely true, is it, Mr. Rozene, because some of these spurious routes are shown called the longest routes and they were averaged with the shortest routes in the railroads' exhibits, and thus they [fol. 1535] are wider than the average—different from the average shortest tariff routes from each mine in the group and also different from the average of the so-called short tariff routes; that is true, isn't it?

The Witness: They have those figures in there that you mentioned, but I thought that one of those columns was just the longest route, but was not averaged with the shortest route.

Exam. Trezise: That is right. So there are other distances in here?

The Witness: Yes.

Exam. Trezise: But you are now talking about the average of the shortest tariff routes and the average of the short tariff routes?

The Witness: Yes, sir, and the difference between the two routes I believe is enough to show that some circuity has been taken out of the short tariff routes by the use of the shortest tariff routes. Now, as I pointed out, there is quite a circuity in shortest tariff routes. For instance, as I pointed out, to Belvidere, Illinois, and I believe that the Commission could, or I suggest that the Commission could use or should use the shortest tariff routes as I have computed them and give due consideration to this extreme circuity that I pointed out, especially as to Belvidere.

Exam. Trezise: And you have not changed your testimony from your conclusion yesterday at all, had you, by [fol. 1536] your statements this morning?

The Witness: No, sir.

Exam. Trezise: Cross-examine.

By Mr. Zoll:

Q. Mr. Rozene, on page 26 of your prepared statement, in speaking of the rates to Wisconsin destinations from the Wisconsin docks, you have made this statement, and I am quoting: "Even though the rate from the nearest dock to a given point might reflect the full scale, it is obvious that establishment of the same rate from farther distant docks from which the shortest possible distance was 50 per cent greater, would result in rates from such farther distant docks that were but 50 per cent of the prescribed scales." That is the end of the quote.

Is it not true that where you say 50 per cent of the prescribed scale, what you meant was 66⅔ per cent of the prescribed scale? For example, if your short route was 100 miles and another dock was 150 miles away, or 50 per cent longer, your rate would be 66⅔ rather than 50 per cent of the scale?

Mr. McElroy: It is just a mathematical computation, isn't it?

Mr. Zoll: Yes. That is all I think it is.

The Witness: Yes, that is right.

By Mr. Zoll:

Q. Now, on page 27 of your statement, in dealing with the Holmes and Hallowell scale, you say that in your opinion it is improper to use that scale to measure the rates [fol. 1537] for a haul of 400 miles with those for a haul

of 150 miles to 200 miles or less. Well now, what do you think of the propriety of using the Holmes and Hallowell scale as a yardstick to measure two different rates which exceed 200 miles?

A. Well, I contend that by the use of the Ho-mes and Hallowell scale that it doesn't give you a correct picture. Now, you could probably use the Holmes and Hallowell scale if you had equal mileages.

Q. Well, from your statement I thought you meant that you couldn't measure by that scale a rate applying for a distance of 400 miles with a rate applying for a distance of less than 200. Now, I am asking you about two rates of say 350 and 400 miles. Could you compare those pretty well by the Holmes and Hallowell scale?

A. I would have to have the Holmes and Hallowell scale before me. I don't recollect just where the break comes in the gradation of the scale. If there is any break in the gradation there, I would say it would be improper to use it.

Q. I understood you to say the break came at 160 miles and that up to 160 miles the scale was rather a reasonable one.

A. In and of itself, yes.

Q. But that after 160 miles it is going up, so to speak?

A. That is right.

Q. Now, if you compared two different rates applying over the distances which caught the Holmes and Hallowell [fol. 1538] scale or its farther distant bracket, so to speak, wouldn't that be a good comparison?

A. As I say, if there was no step-up in the gradation between those two mileages that you speak of.

Q. That is what I thought you would say, because your position, as I understood it, was it was improper to compare one above the break and one below the break?

A. That is right.

Q. Now, in your testimony in which you dealt with what you called the excessive circuity of the tariff routes from Illinois origins, I just wanted to make sure that I understood your position, that you were not asking that any particular routes be prescribed, but merely that that circuity, such as exists, be taken into consideration in the comparison of the rates. You are not asking for routes or anything like that?

A. No. We are not asking you to establish these routes and move traffic over them, as I pointed out. I have used

these comparisons to show the extreme circuity that exists in the routes from Southern Illinois, and we think they are very unfair and that they should be taken into consideration when the mileage from Southern Illinois is used.

Q. You have no objection to the existing routes as operating routes, but you think that their nature should be considered, as far as comparisons of distances are concerned?

A. Yes, sir. We have no objection to the carriers hauling [fol. 1539] the coal over any route they choose. But when it comes to making the rates, we do think that some consideration should be given to all these long unnecessary routes that has a tendency to make our rates appear low, as they would if they were compared with reasonable routes.

Mr. Zoll: That is all I have at this time.

By Mr. Biaett:

Q. Mr. Rozene, when you were talking about the different class rate levels and the fact that Zone 1 of Western Trunk Line territory is a higher percentage than applies in Illinois Freight Association Territory, do you know if any of the comparative points which the carriers have used are located in Zone 1 of Western Trunk Line territory?

A. I believe they are not.

Q. They are not located in Zone 1?

A. They are located in Illinois Freight Association Territory.

Q. Does the general level of class rates in Illinois and in Illinois Freight Association and in Southeastern Wisconsin and in Illinois Freight Association reach about the same result in the level of the rates?

A. Will you read the question, please.

Q. Let me reframe it. In other words, does the same level of rates apply in Illinois and in Illinois Freight Association Territory as apply in Wisconsin and in Illinois Freight Association territory?

A. I believe they do, yes.

[fol. 1540] Q. Now, carrying that one step farther, how do the class rates in Illinois Freight Association Territory compare with the class rates in Central Freight Association territory?

A. I think they are the same.

Q. Well now, if we are going to use class rates and class rate territories in considering coal rates, would you advocate that the coal rates in Illinois Freight Association territory should be on substantially the same level as the coal rates in Central Freight Association territory?

A. No, sir.

Q. What do you think they should be in relation to the coal rates in Central Freight Association territory?

A. I couldn't answer that question. I haven't made a study of the rates in Central Freight Association territory compared with the rates in Illinois territory.

Q. Well, you are familiar with them generally, aren't you, Mr. Rozene?

A. Yes, generally, I am.

Q. And you know that generally they are on a higher level than they are in Illinois Freight Association territory?

A. They might be. In some instances they may be higher, yes, but generally, I couldn't say that as a general proposition. I know of rates that are higher and some are lower.

Q. If you can't carry your class rate analogy in Illinois Freight Association territory to Central Freight Associa-
[fol. 1541] tion territory, how do you think that you can carry it into Zone 1 of Western Trunk Line territory?

A. No. I used the class rate testimony to show that the rate levels in Zone 1 should be higher than they are in Illinois, and the Commission has so found it, that the class rates should be higher, and they found that due to the different operating conditions in the different territories. That is why they made a distinction or stepped the class rates in Zone 1 on a higher basis than they are in Illinois Freight Association territory.

Q. Now, you state that they found that on the basis of operating conditions. Was that the only factor they took into consideration?

A. Well, traffic density and all that, population, and everything that is pertaining to the higher cost of hauling traffic.

Q. Do those factors affect the transportation of coal to the same extent as they affect the transportation of commodities under the class rates?

A. I couldn't answer that question.

Q. Now, with respect to this 23922 scale which you have used, from and to what points does that apply?

A. Well, it was prescribed to apply from points in Indiana to Central and Eastern Illinois.

Q. Those points are in what class rate territory?

A. Illinois Freight.

Q. They are all in Illinois Freight Association territory?

[fol. 1542] Well, except Indiana—those are not in Illinois Freight.

Q. Would you say then that the rates to the comparative points and the rates which carriers are proposing to the suspended points, which are lower than the 23922 scale, are unreasonably high?

A. Again, I couldn't answer that question, whether it is or not. I have used that 23922 scale, also the Midland scale, as yardsticks.

Q. For what purpose?

A. To show the level from Illinois mines to Northern Illinois points.

Q. And also the level from Illinois Mines to Wisconsin points?

A. That is right.

Q. And those levels are below 100 per cent of the 23922 scale, are they not?

A. I think my Exhibit No. 24 shows the situation. Page 1 shows that the average level from Illinois groups to the suspended points is 90 per cent of the 23922 scale.

Mr. McElroy: That is of your scale extended, isn't it?

The Witness: Yes, it is extended.

By Mr. Biaett:

Q. That is the present rates?

A. Present rates, yes.

Q. Well, do you know of any reason why rates from the Illinois mines to points in Illinois, origin points in Wisconsin and Illinois Freight Association territory, should [fol. 1543] be on a lower level than the 23922 scale?

A. Yes, I believe they should, in view of the level of the rates from Indiana to this territory and in view of the level of the rates from Lake Michigan docks to the Wisconsin points as I pointed out. I don't think they should be on as high a level as either one of those points.

Q. You are dealing there with purely a rate relationship, are you not?

A. Yes, sir.

Q. From the standpoint of the maximum reasonableness of these rates for intrastate transportation from Illinois

mines to Northern Illinois, do you know of any reason why they should be on a lower level than the 23922 scale?

A. Yes. In the first place, the 23922 scale is based in a lot of instances on the shortest circuit route distances, and here you are dealing with tariff route distances, which are not the same as the shortest circuit route distances.

Q. Do you know how much lower they should be than the 23922 scale?

A. No, I couldn't state specifically.

Q. With respect to the use of the Holmes and Hallowell scale as a measuring stick, as I understand it, you have no objection to the use of the Holmes and Hallowell scale to measure the relative levels of rates from the different fields to a particular destination, is that correct?

[fol. 1544] A. Why, yes, we object to the use of the scale on account of, as I stated in my direct examination, the gradation of the scale. That is one of our main objections. Sure, we object to it.

Exam. Trezise: Would you pardon me if I put this on the record?

Mr. Biaett: Yes, sir.

By Exam. Trezise:

Q. Mr. Rozene, do you believe that frequently there is a misconception concerning a comparison of the rates with the Holmes and Hallowell scale as you have set forth here? In other words, what I mean, when the Holmes and Hallowell scale is used as a tape measure with its varying and alleged disproportionate notches, it still may be used to show that one rate is a greater percentage of that scale than another rate for like distance, without undertaking to make a comparison with the Holmes and Hallowell scale from the standpoint of reasonableness, to show that the compared rates are higher or lower than the Holmes and Hallowell scale itself?

A. As I understood you, you said for like mileages.

Q. For like mileages.

A. It could be used for that purpose, yes, sir.

Q. And it still is not making a comparison with the Holmes and Hallowell scale, other than to compare two rates?

A. That is all.

By Mr. McElroy:

Q. If that same question were asked of you with respect [fol. 1545] to the 23922 scale, would your answer be any different? Haven't you used the 23922 scale as a measuring stick to test the Illinois rate, on the one hand, and the Indiana rates, on the other?

A. Well, the 23922 scale doesn't contain the infirmities of the Holmes and Hallowell scale.

Mr. McElroy: Forget the infirmities.

Exam. Trezise: Are you undertaking to say, no?

The Witness: No. It could be used for the same purpose.

By Exam. Trezise:

Q. Well, Mr. Rozene, you said a while ago that the rates in Illinois ought to be lower than this other scale that you mentioned.

A. Because the rates in surrounding territory are lower. That is my contention. We have shown the rates in Illinois are on a higher level than the rates from Indiana to this territory and from the Lake Michigan docks to the compared points in Wisconsin.

By Mr. McElroy:

Q. By the use of some measuring yard?

A. Yes.

Q. And the measuring yard was the Holmes and Hallowell scale or the Midland scale or the 23922 scale?

A. Yes.

Q. And as to the 23922 scale, you extended that scale so you would have a distance between Illinois and some points in Southern Wisconsin?

[fol. 1546] A. Yes.

Q. And the Interstate Commerce Commission didn't prescribe any scale for that distance?

A. That is right, they did not.

Q. So you are not attempting to make any comparison of the level of the rates per se in Illinois with the 23922 scale?

A. No. I am using the 23922 scale as a yardstick to show what the level of our rates in relation to that scale is compared to Wisconsin and Indiana.

Q. The reason I asked that question, I gathered from your response to questions asked by Mr. Biaett, you were attempt-

ing to make a comparison of the level of the rates with the 23922 scale which you have extended.

A. I am not trying to show anything in and of itself. I am making comparisons.

By Mr. Biaett:

Q. Do you see any objection to using the Holmes and Hallowell scale as a comparison?

A. Yes, because there are unequal hauls in this territory. You have hauls from 150 miles to 400 miles. I stated in my direct testimony that the gradation of the Holmes and Hallowell scale doesn't show a true picture of what the setup should be.

Exam. Trezise: May we get it straight then. Why did you say that the rates in Illinois should be lower than the 23922 scale, if you are not making a comparison with the 23922 scale, from the standpoint of reasonableness? How [fol. 1547] would you explain that? You know that is on the record.

A. I couldn't make a statement as to what the rates in Illinois should be in and of themselves without using the comparisons that I have set forth in my exhibits, to show that our rates are higher than the rates from competing fields.

Exam. Trezise: You did say that you thought that the rates in Illinois should be lower than the 23922 scale, didn't you?

The Witness: In view of the level of the rates from the other competing fields, they should.

Exam. Trezise: And you say that that is not making a comparison with the 23922 scale from the standpoint of relative reasonableness?

The Witness: Yes, relative reasonableness, it is.

Exam. Trezise: Thank you.

By Mr. Biaett:

Q. In other words, Mr. Rozene, you take it that because the hauls from the Southern Illinois Group are longer than the hauls from certain other groups in Illinois, that in making a comparison with the Holmes and Hallowell scale the Southern Illinois Group should take a lower percentage of

the Holmes and Hallowell scale than the other groups from which the distance is shorter?

A. No, I don't believe in using the Holmes and Hallowell scale for any purpose in measuring the rates in this territory, and I haven't used it.

[fol. 1548] Q. Do you know, Mr. Rozene, to what extent the Holmes and Hallowell scale grades upward from 160 miles to 400 miles?

A. I am sorry, I haven't the scale. I couldn't say without having the scale before me.

Q. Do you have Mr. Robertson's Exhibit No. 4 before you?

Exam. Trezise: Well, regardless of how it grades, you are not using it now?

The Witness: No.

Exam. Trezise: It wouldn't make any difference how it grades, unless there is something you want to develop from that.

By Mr. Biaett:

Q. Do you have that exhibit, Mr. Rozene?

A. No, I haven't.

Q. On page 3 of Section 4 of Mr. Robertson's Exhibit 4 it shows that the rate from Fulton County to Beloit is 82.2 per cent of the Holmes and Hallowell scale; the rate from Southern Illinois to Beloit is 64.3 per cent of the Holmes and Hallowell scale. Now, taking those percentages for the purpose of comparison, would you say that the rate from Southern Illinois to Beloit is unreasonably high?

A. I couldn't say, if you are using the Holmes and Hallowell scale. I couldn't make any statement as to whether it was high or low.

Mr. Vesey: Who stops you from making that statement?

The Witness: Nobody is stopping me from making it. I am not using the Holmes and Hallowell scale. I don't [fol. 1549] believe in the use of it.

By Mr. Biaett:

Q. Mr. Rozene, you have criticized that scale. Now, we want to know something specific about why you criticize that scale, other than interpreting the Commission's decision.

A. If you will read my testimony shown on pages 28 and 29 of my direct testimony, why, it will probably answer all your questions.

Mr. Stadell: Pages 28 and 29, what you are referring to is a prepared statement of your direct testimony which you read, is that right, yesterday?

The Witness: Yes, sir.

By Mr. Biaett:

Q. Do you know whether or not the Holmes and Hallowell scale grades upward at a sufficient rate of gradation from 160 miles to take care of this difference in percentage of that scale which I gave you?

A. No, I don't.

Q. Mr. Rozene, I show you Exhibit No. 13 in these proceedings, which is a reproduction of the Holmes and Hallowell scales prescribed in 69 ICC 11.

A. What are the mileages you are speaking of?

Q. 160 to 400 miles.

A. Well, the rate at 400 miles is $3.61. The rate at 160 miles is $2.00. That is a difference of $1.61. Now, what do you want to know?

Q. You have a difference in distance of 240 miles?

[fol. 1550] A. Yes, sir.

Q. Well now, going back to this fact, the rate from Fulton County to Beloit is 82 per cent of the Holmes and Hallowell scale, and the rate from Southern Illinois to Beloit is 64 per cent of that scale. Now, if that is not a proper gradation in the rates, will you tell me what is wrong with the gradation?

A. I am not saying anything about the gradation of the rates from Fulton County and Southern Illinois to Beloit.

Q. Well, I am asking you about them.

A. I haven't testified about the gradation of the rates.

Mr. Vesey: If the Examiner please, I just understood the witness to give him the normal differential between the two as $1.61, isn't that correct?

The Witness: I gave him the difference in the Holmes and Hallowell scale between 160 miles and 400 miles.

Mr. Vesey: Yes.

By Mr. Biaett:

Q. Well, I want to know about this gradation. Would you say that the fact that Southern Illinois is 18 percentage points lower of the Holmes and Hallowell scale to Beloit is justified by the gradation in the Holmes and Hallowell scale to which you have referred?

Mr. Stadell: I will have to object to that question, if the Examiner please, on the ground that there is no issue in these proceedings with respect to the relationship between the rates from Southern Illinois, on the one hand, and Fulton [fol. 1551] County on the other, to Beloit.

Mr. Vesey: I would like to join in that objection on the ground that this line of cross examination is now superfluous in view of the fact the witness already testified as to what would be the normal differential between the two, namely $1.61.

Mr. Stadell: Oh, no, that isn't right.

Exam. Trezise: Well, I think if the witness has in mind an answer to this question, which seems to be relatively simple, he could answer that. He is supposed to be skilled in the rate business. Now, do you have an answer to that question?

The Witness: I have told Mr. Biaett that we haven't used the Holmes and Hallowell scale in connection with any of our rates, and I would have to study this before I could give you a definite answer.

By Mr. Biaett:

Q. We have used the Holmes and Hallowell scale in our exhibits, and you said it was not proper. I want to know why it is not proper.

A. I have told you in my direct testimony.

Q. Yes, but you are just generalizing. I want to know specifically what is wrong with those rates, if anything is wrong with them. I can take every group and compare it with Southern Illinois, but I was just taking one to make it as simple as I could.

Mr. Vesey: Mr. Examiner, Mr. Biaett says that is what he wants. He got the specific answer as to what the normal [fol. 1552] differential would be.

Mr. Biaett: I don't believe this is your witness, Mr. Vesey.

Mr. Vesey: Well, I have an interest in this witness.

Exam. Trezise: Well, I think we will let the witness answer, either about any fraction of the multiplication table or any percentage of any particular rule, or you can use the Holmes and Hallowell scale which is not applied any place at the present time, as I understand.

Mr. Stadell: May I ask a question of Mr. Biaett just to get the question that he has asked clear.

Exam. Trezise: Go ahead.

Mr. Stadell: Your question relates solely, as I understand it, Mr. Biaett, to the relative levels of Fulton County versus Southern Illinois to Beloit?

Mr. Biaett: That is correct.

Mr. Stadell: As measured by that scale as shown in your exhibit?

Mr. Biaett: Yes.

Mr. Stadell: In other words, you are not talking about the intrinsic level of the rates from either group to Beloit?

Mr. Biaett: That is correct.

Exam. Trezise: Then what is your question?

Mr. Biaett: My question is, Mr. Rozene takes the position, Mr. Examiner, that the interstate rates to Beloit and other [fol. 1553] Wisconsin points which we are using for comparative purposes are unreasonably high. Now, I have shown him under the Holmes and Hallowell scale the rate from Fulton County is 82 per cent of that scale and the rate from Southern Illinois is 64 per cent of that scale. Now, by comparison, I want to know if, in view of the fact that the rate from Southern Illinois is 18 percentage points lower than the rate from Fulton County to Beloit, there is anything wrong in the gradation of the rates. He has said that the scale grades upward.

Exam. Trezise: Now, can you answer that question?

The Witness: I can't answer without going into this thing by these two specific points. Now, you are using the Holmes and Hallowell scale here for measuring rates that are of unequal hauls, and as I have stated in my testimony, we don't think it is proper to use that scale when there are unequal hauls involved.

By Mr. Biaett:

Q. Because the scale grades upward from 160 miles?

A. That is a matter that you have to explain. I can't explain it. I can't pick them out individually. There are thousands of rates here.

Q. All right. Do you see anything wrong in the fact that the rate from Fulton County to Beloit is 82 per cent of the scale and the rate from Southern Illinois to Beloit is 64 per cent of the scale?

[fol. 1554] Mr. Vesey: I object. The witness said already he couldn't answer it because he didn't study it.

Exam. Trezise: Do you wish to answer that again?

The Witness: I will have to answer it the same way.

Exam. Trezise: Well, same answer.

The Witness: Same answer.

Mr. Biaett: What?

The Witness: That I haven't gone into this thing.

By Mr. Biaett:

Q. Well, you have gone into the rates from Fulton County and Southern Illinois to Beloit, haven't you?

A. No, I haven't said a thing about Beloit in this case specifically. I have talked generally.

Exam. Trezise: And if you did go into it, would you measure the propriety or the impropriety of those two rates by the percentage of the Holmes and Hallowell scale as a guide for determining your conclusion?

The Witness: No, sir, I would not.

Mr. Vesey: Let me ask a question now, in view of that. How do you know what you would do since you haven't made the study?

The Witness: We never used the Holmes and Hallowell scale in any of our studies, so that is why I wouldn't use it here.

By Mr. Biaett:

Q. Is your recollection of prior cases very good, Mr. Rozene? Do you mean to say you haven't used the Holmes and Hallowell scale for comparative purposes in any case?

[fol. 1555] A. Not recently, no. Since we have found out the infirmities of it, we have discarded it, and since we have got something that the Commission has handed us or pre-

scribed, which is the Midland scale or the 23922 scale, we use that because we think they are more proper than the Holmes and Hallowell scale.

Q. Then although you are telling the Commission, Mr. Rozene, that you should disregard the Holmes and Hallowell scale, we shouldn't use any comparisons with that scale, you are not able to tell the Commission just what the very instant gradation in that scale is?

A. I think that has been gone through in so many cases and the Commission has commented on it, it would be unnecessary to put it in this case. You can read case after case where the Commission has commented on the gradation of the Holmes and Hallowell scale.

Q. Now, because of that gradation, I take it, that it is your position that the rates from Southern Illinois should be on a lower percentage of the Holmes and Hallowell scale than the rates from the shorter distance groups?

A. No.

Mr. Vesey: I object to that on the ground that he has made a previous answer on that.

Exam. Trezise: Well, the witness answered the question. I will let it stand.

Mr. Biaett: What did the witness say?

[fol. 1556] The Witness: I said no, I haven't used it. I didn't say anything about it.

By Mr. Biaett:

Q. If you don't know anything about the Holmes and Hallowell scale, why did you spend three or four pages of your prepared statement on it?

Mr. Vesey: Mr. Examiner, I object. Time after time this witness has answered that question. Why do you have to keep pressing him? We have got a clear cut answer to the question.

Mr. Biaett: What is the answer?

Mr. Vesey: He hasn't made the study. He doesn't know.

Mr. Biaett: Then I move to strike all of Mr. Rozene's reference and criticism to the Holmes and Hallowell scale if he doesn't know anything about it.

Mr. Vesey: I object to that.

Mr. Stadell: That isn't his statement. He didn't state that.

Exam. Trezise: The motion is overruled. Will you ask another question, Mr. Biaett.

Mr. Biaett: I want an answer to the same question, Mr. Examiner.

Exam. Trezise: Now, you may have the answers. The Examiner doen't understand what answer you want. I want to be fair with you.

Mr. Biaett: Mr. Examiner, what I want to know is this: Mr. Rozene says that it was an improper gradation in that [fol. 1557] scale, and we have a lot of comparisons with the Holmes and Hallowell scale in our exhibits; now, we want to know just where that improper gradation is and how much it is.

Mr. Vesey: If the Examiner please, the witness said he hadn't made the study to give that. Now, it is just too bad he hasn't made that study.

Mr. Kaier: Mr. Witness, do you concur in Mr. Vesey's statement that you have said you have not made the study which would be necessary to answer these questions put to you by Mr. Biaett?

Exam. Trezise: The witness has already stated that there was a break. While he said he didn't know about the Holmes and Hallowell scale, he apparently does know probably as much or more than any of us about it. That is the Examiner's statement from past experience. Now, there is a break—what is it, did you say, 160 miles?

The Witness: Yes, there is a break. Now, I haven't made a study of this scale in recent years to be able to answer it the way it should be answered. Now, if you will give me time to study it out and work it all out, I will be glad to answer any question. But I can't do it because I haven't made a recent study of it. However, you don't have to make any study of it. All you have to do is read some of the Commission's decisions. It is the volumes of the recent decisions of the Commission, regarding the Holmes and Hallowell [fol. 1558] scale. You don't have to develop that here. If you had adhered to some of those decisions, you probably wouldn't have used it yourself.

Exam. Trezise: Let us not argue.

By Mr. Kaier:

Q. Mr. Rozene, is it a fact that while you offer a general criticism of the Holmes and Hallowell scale and its pro-

gression and object because of that general criticism to its use as a comparison, you have not made a study which is sufficient for you to say that the rate comparisons offered by the respondents in this case with the use of the Holmes and Hallowell scale are subject to the general criticism of the scale which you made?

A. Yes, I would say that they are, because the Commission, in my opinion, the Commission has discarded the Holmes and Hallowell scale for use as a yardstick in this territory when they prescribed the Midland scale.

Exam. Trezise: All right. Now, just give us your testimony.

By Mr. Kaier:

Q. In other words, can you relate those criticisms, which you say the Commission made, of the Holmes and Hallowell scale to the use which the respondents here make of the Holmes and Hallowell scale?

A. No, I can't.

By Mr. Biaett:

Q. Although that scale grades upwards from 160 miles, Mr. Rozene, you take a group which is substantially the same distance from Beloit as Southern Illinois and compare [fol. 1559] the percentages of the Holmes and Hallowell scale from Southern Illinois and that other group to Beloit, would those criticisms which you have made apply to the Holmes and Hallowell scale in that particular instance?

A. It depends on the distance from that other group.

Q. Say it is the same identical distance, down to a tenth of an inch.

A. You would use it. I wouldn't use it. I wouldn't object if both groups were 400 miles. Go ahead and use it. I wouldn't use it.

Q. Then the criticisms which you pointed out wouldn't apply to that situation?

A. I criticize the scale to the extent it shouldn't be used for unequal hauls, and you have unequal hauls here.

Exam. Trezise: Well, Mr. Rozene, you do use it for like hauls and you do think it is a proper rule, just the same as I say some other scale might be. So don't say that you would discard it for similar distances, as a rule.

The Witness: He wants me to approve it for equal hauls, and after I approve it for that he will come along and try to stretch me out.

Exam. Trezise: Mr. Rozene, you have said in answer to the Examiner's question that it could be used as a tape measure with its varying or alleged disproportionate notches to test one rate with another. Now, you have said that.

[fol. 1560] The Witness: Oh, it can be used, but I am not advocating the use of it.

By Mr. Biaett:

Q. Now, will you take unequal distances, that is, the rate from one group which is shorter distant than Southern Illinois, how irregular is the gradation of the Holmes and Hallowell scale?

A. I don't understand your question, Mr. Biaett.

Q. Well now, what I want to know is how much in error are our exhibits. That is what I want to get, your opinion on that, since we have used the Holmes and Hallowell scale.

Mr. Kaier: He said he didn't know about that.

Exam. Trezise: Well, have you testified about the errors in that?

The Witness: No, I haven't.

Exam. Trezise: We will take a recess for a few minutes.

(Recess taken.)

Exam. Trezise: All right, gentlemen, when you are ready, let us continue. Any further questions?

By Mr. Biaett:

Q. Mr. Rozené, I believe you stated that you had used the 23922 scale in your exhibits?

A. Yes, I have used it in some places.

Q. Do you know the distance for which that scale was prescribed?

A. 300 miles, I believe.

Q. Now, are there any distances from Southern Illinois to either the suspended or comparative points used in the car-

[fols. 1561-1562] riers' or your exhibits which are 300 miles or less?

A. From Southern Illinois?

Q. Yes, sir.

A. I would have to look and see.

Q. Go right ahead.

A. May I ask, are you speaking of average distances or individual distances from certain points?

Q. The average distance from the Southern Illinois Group to the individual points.

A. No, there isn't; on the shortest tariff route distances, there isn't.

Q. Now, do you think it is more proper to use a scale which was prescribed for a distance of only 300 miles in comparing rates from Southern Ilinois than using the Holmes and Hallowell scale which was prescribed for a distance of 650 or 700 miles?

A. Certainly I do.

Q. Even though you have to extend that scale?

A. Yes, sir. That is all we have and that is all we can do.

Q. Now, Mr. Rozene, you said that you hadn't made a study of this scale. Before the hearing closes will you be able to make a study of this scale, so the Commission will be informed of the gradation above 160 miles and the extent of that?

A. Of the Holmes and Hallowell scale?

Q. Yes, sir.

A. Why, yes, I could make a study of that.

[fol. 1563] By Mr. Biaett:

Q. Will you turn to your Exhibit 29, please, Mr. Rozene, [fol. 1564] the rates to Rockford from the Illinois and Indiana Groups, on page 6.

A. Yes, sir.

Q. On that exhibit you show that the average rate from twelve Illinois Groups to Rockford is 81 per cent of the Midland Electric scale. That is correct, is it not?

A. No. I show 13 points and the suspended rate is 81 per cent, the average is 81 per cent of the scale.

Q. The suspended rate?

A. Yes, and it is from 13 points instead of 12, as you state.

Q. And from the Indiana Groups which you show, the suspended rates average 74 per cent of that scale?

A. Yes, sir.

Q. Now, the Indiana Groups which you take, the five principal ones, Brazil-Clinton, Linton-Sullivan, Princeton-Ayrshire, Boonville and Evansville, take the average per-

centage of those scales from those groups to Rockford and compare that to the average level from Springfield, Centralia, Belleville, DuQuoin, and Southern Illinois, instead of a variation of 81 and 74 per cent, would you not get a substantial equality of approximately 74 per cent?

A. I couldn't answer that without figuring it out.

Q. In any event, if you take only the five Illinois Groups which I named, you will get a lower percentage of the Midland Electric scale, will you not?

[fol. 1565] A. Again, I would say I would have to figure it out.

Mr. Kaier: It is shown right on page 6 of your exhibit, Mr. Rozene.

The Witness: He is talking about averages, Mr. Kaier, and it doesn't show the average with those points out.

By Mr. Biaett:

Q. Would you compute the average for those five groups I have named?

A. Which ones?

Mr. Stadell: What is the purpose of that? Why don't you compute it and put it in as a part of your case, if you want it. The figures are there. You can do any computing you want to.

Mr. Biaett: Mr. Examiner, that is the basis for a subsequent question. I have computed it.

Exam. Trezise: Well, give him your computation.

Mr. Biaett: I compute that you will get 74 per cent from the five Illinois groups and 74 per cent from the Indiana groups.

The Witness: What groups were those, again?

Mr. Biaett: Springfield, Centralia, Belleville, DuQuoin and Southern Illinois.

The Witness: Why do you select those?

Mr. Biaett: I selected them, Mr. Rozene, for the simple reason they are the five most southerly points to compare with the Indiana groups.

[fol. 1566] The Witness: Why do you exclude Danville?

Mr. Vesey: Mr. Examiner, the question has been asked. I don't see why you should argue it.

Mr. Biatt: Will you compute it both ways? That will suit my purposes.

The Witness: Are you asking me a question?

Mr. Biaett: Yes.

The Witness: I will check those with you, and you want me to compute those to find out what the average would be from those groups?

Mr. Biaett: Yes, to the six groups.

Mr. Stadell: Well, I don't see the relevancy of the computation, Mr. Examiner, and I object to it.

Exam. Trezise: Well, you can put that in, Mr. Biaett, and if you want to ask him a question, tell him what you have calculated as a hypothetical proposition, and get the answer.

By Mr. Biaett:

Q. Mr. Rozene, if you take the average percentage of the Midland Electric scale from Springfield as 76 per cent and Centralia of 74 per cent and Belleville of 71 per cent and Du Quoin of 77 per cent and 76 per cent, and from Southern Illinois of 72 per cent, would the average of those be substantially the same as the 74 per cent you show for the Indiana groups?

A. I couldn't answer that without checking them up. It is just a matter here of adding that column up and dividing it. You can take any factor out of it and eliminate it and [fol. 1567] you can get a certain result. Now, I have added them all up. Now, I can't sit here and take out certain ones and tell you right at snap judgment what the result would be, because I wouldn't know. I would have to put it on a machine, or I can sit here and figure it out if you want me to.

Exam. Trezise: All right, let us assume that it would be substantially that, without further proof. Now, ask him the question that follows that.

By Mr. Biaett:

Q. Then, Mr. Rozene, the higher level of the rates from the Illinois groups to Rockford as compared with the Midland Electric scale is achieved by the use of the more northerly groups, such as Fulton-Peoria, Northern Illinois, Atkinson, Victoria and Alpha, is it not?

A. You say it is achieved, yes; but we have also got very long circuitous routes, as I pointed out, from Southern Illinois, that is very material in that computation.

Q. Leaving that out of the answer, what is your answer?

A. Well, yes. I have just taken all of them as shown in the exhibit.

Q. Mr. Rozene, in speaking of the Lake Dock Coal Cases, and in pointing out that the order in the Lake Dock Coal Cases has been vacated, did you intend to leave the impression that that was the only decision of the Commission in which the rates from Southern Illinois to Wisconsin had been approved?

A. We have had several cases, not since then—yes, [fol. 1568] one since then; they have prescribed rates to Janesville, Fort Atkinson, from Illinois.

Q. Are you familiar with the decision of the Commission in Illinois Coal Traffic Bureau versus Alton & Eastern Railroad, 164 ICC 543?

A. What is the docket?

Q. I can't give you the docket number.

A. When you say 164, is that 20912, is that the docket you speak of?

Q. I am not certain of the docket number. Maybe I have it here. Yes, that is docket No. 20912.

A. Yes, I am familiar with that.

Q. Are you familiar with the decision of the Commission in Coal From Illinois, Indiana and Kentucky, Investigation and Suspension Docket No. 3536?

A. Is that the case following this 20912?

Q. Yes.

A. Yes, sir.

Mr. McElroy: What is the reference to that?

Mr. Biaett: 174 ICC 545.

By Mr. Biaett:

Q. Can you tell me if the rates from Southern Illinois to points in Southern Wisconsin were involved in both of those proceedings?

A. I believe they were. Yes, they were.

Q. Can you tell me if the reductions which the Illinois carriers have made in the rates from Southern Illinois to [fol. 1569] Beloit, Janesville and Burlington, Wisconsin, were suspended by the Commission and ordered placed upon the level in which they had been prescribed in the Lake Dock Coal Cases?

A. They were suspended, but I don't know as to the points that you mentioned.

Q. The Commission refused to permit reductions from Southern Illinois to points in Southern Wisconsin, didn't they?

A. They refused them, and in the I. & S. case it was pointed out, in this 3536, it was pointed out that the Southern Illinois rates were related to the docks, and they couldn't reduce the Southern Illinois rates without reducing the dock rates because there was a relationship there. But since then the Commission has vacated its order in the original Lake Dock cases, and if that had been vacated at that time I don't believe there would have been any question about the rates going in. Due to that order, which they have since vacated, they refused to reduce the rates in Illinois for that purpose.

Q. Is it your position the rates from Southern Illinois to points in Southern Wisconsin are intrinsically unreasonable or unreasonable per se or that they are unduly prejudicial to Southern Illinois because they haven't been reduced to the same extent that the docks have been reduced?

A. Yes, I believe they are, for this reason, that as I stated, in 20912 they had the relationship with the docks and the only reason they didn't permit the reduced rates [fol. 1570] to go in was because of the order in the Lake Dock Coal Cases. If that order hadn't been in, I believe the rates prescribed in 20912 would have been published.

Q. Will you agree if the rates had been unreasonable per se or intrinsically unreasonable, the Commission would not have permitted their establishment, irrespective of their relationship with the docks?

Mr. Stadell: I object to that question as to what the Commission would have done.

Exam. Trezise: He has already explained his view on that.

Mr. Biaett: Not on that particular question.

Exam. Trezise: As to what the Commission would have done, well, let us not ask what the Commission would have done.

By Mr. Biaett:

Q. Is it your position that the rates from Southern Illinois to Southern Wisconsin are unreasonable per se?

A. In and of themselves?

Q. Yes, sir.

A. Yes.

Q. On what do you base that opinion?

A. Why, on the rates that they have prescribed to Janesville, Fort Atkinson, other points.

Q. From what groups did they prescribe rates to Janesville and Fort Atkinson?

A. All of the Illinois and Indiana groups.

[fol. 1571] Q. Didn't they just prescribe rates to Janesville and Fort Atkinson from the Fulton-Peoria Group?

A. They prescribed that as a base group, yes. To clarify that statement, they did prescribe the rates from the base group, but there was no differential situation involved there. So, naturally, the differentials over Fulton County continued and the rates were reduced from the other fields by the same amount as from Fulton County.

Q. Your position is because the Commission prescribed a rate from Fulton County to Fort Atkinson, the rates from Southern Illinois and these other groups to points in Southern Wisconsin are unreasonable?

A. I believe the differential is too high there.

Q. Then that is a question of relationship, isn't it, Mr. Rozene?

A. Yes.

Mr. Biaett: That is all I have right now, Mr. Examiner. However, I am making a check of one of Mr. Rozene's exhibits and I would like to reserve the right to cross-examine him later on.

Exam. Trezise: He will probably be here Monday morning.

The Witness: The last exhibit we discussed was 29 and probably everybody has it before them. I would like to show a correction in there or make a correction on that exhibit.

Mr. Zoll: While you are at it, will you fill out the blanks in [fol. 1572] front. If you did it before, I didn't catch it.

The Witness: Exhibits 27 and 28.

Mr. Stadell: That is Exhibit No. 27 should be entered in the first blank space on the bottom of the title page of Exhibit 29?

The Witness: Yes.

Mr. Stadell: And Exhibit No. 28 in the second blank space?

The Witness: That is correct. On page 7 of this exhibit, line 41, column E, it reads 368; it should read 386; and on line 42 in column E, it now reads 268, and it should read 368.

Exam. Trezise: Is that all?

The Witness: That is all.

Mr. Biaett: Does that change your totals?

The Witness: No. That is just a typographical error there.

Exam. Trezise: Mr. Hunter.

By Mr. Hunter:

Q. Mr. Rozene, your exhibits 25, 26 and 29, and perhaps others, compare rates or compare the level of rates within Illinois, from Indiana to Illinois, and from Western Kentucky to Illinois, on the basis of earnings per ton mile, the 26558 or the Midland Electric scale, and you do not use when making these comparisons the rates from the individual groups, but you treat each state as a whole. In other words, you include short haul rates which reflect high revenue ton miles with rates from the Southern Illinois group, for example, having much longer mileages and correspondingly lower ton mile earnings. Now, are we to [fol. 1573] understand from this presentation of yours that you are advocating the same revenue ton miles for all rates regardless of the distances involved?

A. No, I am not.

Q. Are you then advocating that rates be made on a state basis?

A. On a what basis?

Q. On a state basis.

A. State?

Q. Yes, that is, Illinois be treated as a single origin group, Indiana as an origin group, and Western Kentucky as an origin group and the same ton mile rates to apply from each of the states?

A. No.

Q. Well, Mr. Rozene, should not the groups of comparable distances in each state be the proper basis of comparison? For example, you have a group in Illinois 300 miles distant; you have a group 300 miles distant in Indiana.

Would it not be proper to compare the rates from those respective groups with each other?

A. I have done that.

Q. Yes. I refer you in that connection, Mr. Rozene, to page 6 of your exhibit 23, if you will refer to it, and I refer you to the rates shown from the Springfield Group, line 10, with present earnings per ton mile of 7.1 mills, and the suspended rates with earnings per ton mile of 7.5 [fol. 1574] mills. That is to Forreston, Illinois. Now, in line 22, from the Brazil-Clinton Field, mileage 252 miles, you have present per ton mile revenues of 7.1 mills and under the suspended rates 7.5 mills. What is wrong with comparing the Brazil-Clinton Group with the Springfield Group?

A. Well, Mr. Hunter, you are directing my attention to two unlike things. For instance, you take the distance from the Springfield Group of 255 miles. Well, in other words, that is an average from all the origin points in that group. While from Brazil-Clinton that is only from two or three or four mines on the St. Paul. That doesn't apply from the entire group.

Exam. Trezise: Why didn't you give us all of them?

The Witness: Because this is a study of the carriers' exhibit and it is their figures.

By Mr. Hunter:

Q. Well, look at the other earnings there, Mr. Rozene. Look at line 23. You have 266 miles. You have the same earnings. Also look at line 24. You could take all of them. I don't know why you put them in three different groups, but you have the identical earnings, all of the mines, the same revenues, the same returns.

The Witness: Well, I can't understand either why we have three groups there, but that is what you have and that is the only way I could——

Q. Well, isn't that a proper basis of comparison, that is [fol. 1575] my point I am trying to make. Is there anything wrong with comparing a group 300 miles distant in Illinois with a group, for example, 300 miles distant in Indiana?

A. No. If you had said that, I could have answered that right away.

Q. All right. I have just asked that, and in view of that answer, what was your purpose in introducing your Exhibit 25 comparing the rates on a state basis?

A. Well, there is a 13th Section petition before the Commission here and I want the record to show what the level of the rates were in Illinois, and there they are as the railroads have computed them from their figures.

Mr. Hunter: That is all. Thank you.

Exam. Trezise: Do we have any more questions? It is about time to adjourn, and if there is no objection, we will adjourn until 10 o'clock Monday morning.

(Witness excused.)

(At 12:00 o'clock noon, September 25, 1943, adjourned to 10:00 o'clock A. M. September 27, 1943.)

[fol. 1576] Morrison Hotel, Chicago, Illinois,
September 27, 1943.

The hearing resumed pursuant to adjournment, at 10:00 o'clock, a. m.

Before R. N. Trezise, Examiner; F. B. McElroy, Illinois Commerce Commission.

APPEARANCES:

As heretofore noted.

PROCEEDINGS

Exam. Trezise: All right, gentlemen, when you are ready, we will continue.

HARRY A. ROZENE resumed:

Cross-examination (Continued):

Exam. Trezise: I want to ask you a few questions, Mr. Rozene.

The Witness: Yes.

By Exam. Trezise:

Q. Mr. Rozene, in making percentages of the Holmes and Hallowell scale in your exhibit, did you use the Holmes and Hallowell scale as prescribed in 69 ICC 11 plus 15 cents general increase for the distances you have used?

A. Yes, I used the 15 cent increase over this scale, original scale as prescribed in 69.

Q. Do you recall whether the Commission prescribed the [fol. 1577] route over which the traffic must move under the Holmes and Hallowell scale?

A. They did not.

Q. They merely prescribed the method for making the rates?

A. Yes, sir.

Q. Did the Commission prescribe the route over which shipments must move under the Midland Electric scale to Iowa or under the Sioux Falls, South Dakota, Chamber of Commerce cases?

A. No. They prescribed the method which should be used.

Q. Are there any single line routes from Illinois to Iowa?

A. Yes, sir.

Q. Does the Burlington have a single line route to destinations on its line in Iowa?

A. Yes, sir, they do.

Q. Does the Burlington serve Duluth or the Head-of-the-Lakes?

A. No.

Q. Then any movement from Duluth or the Head-of-the-Lakes would be a single line to Burlington points in Iowa, is that correct?

A. No, sir, not from Duluth.

Q. That would be a joint line?

A. Yes, sir.

Q. And it would be a single line from Illinois to Iowa?

A. Yes, sir.

Q. Or the other destinations that may be on the Burlington?

A. Yes, sir.

[fol. 1578] Q. Does the Illinois Central have a single line route from Illinois to destinations in Iowa?

A. Yes, sir, they do.

Q. Does the Illinois Central serve Duluth or the Head-of-the Lakes?

A. No, sir.

Q. Then any movement from Duluth or the Head-of-the-Lakes to destinations locally on the Illinois Central in Iowa would be a joint haul and a hauf from Illinois to Iowa would be a single line haul, is that correct?

A. That is correct, yes, sir.

Q. The Illinois Central also serves Sioux Falls, South Dakota, does it not?

A. Yes, sir.

Q. Are there any single line routes from Illinois to Iowa destinations such as over the Rock Island, the Wabash, and the M. & St. L.?

A. Yes, sir.

Q. Without making an exhaustive investigation, would you be able to say that there are more single line routes to destinations in the destination territory you mentioned in your exhibits, such as Iowa and South Dakota and so forth, from Illinois than from the Head-of-the-Lakes?

A. Well, I would say offhand there would be more single line routes from Illinois than from the Head-of-the-Lakes.

[fol. 1579] Exam. Trezise: Are you ready, Mr. Wilkinson?

Mr. Wilkinson: Yes.

By Mr. Wilkinson:

Q. Mr. Rozene, on page 3 of your prepared statement, next to the third from the last paragraph, you state, as I understand it, that the destinations involved in these proceedings are the same as the destinations involved in 23130, the 13th Section case?

A. As I stated, some of them are in these cases.

Q. Well, that is what you meant by whatever is stated in that paragraph, that some of them are the same?

A. Yes. There are other points in Illinois besides Rockford and Freeport involved in 23130.

Q. And there are other points in this case where the rates are involved that were not involved in 23130, is that true?

A. That were not involved in 23130?

Q. That were not involved in 23130.

A. Well now, in 23130, that took in practically the whole state of Illinois, and it took in a list of intermediate points. In other words, in 23130 they picked out specific points as key points, as they have done in this case, and I couldn't say whether there are some involved here that were not involved in 23130.

Q. So by your statement on page 3 you did not intend to create the idea that all of the points that were involved in 23130 are involved in this case, and vice versa, that all

[fol. 1580] of the points involved in this case were involved in 23130?

A. Not right up in this territory, because as I stated, there were other points, such as Champaign and Decatur, involved in 23130 that are not involved in this case. But I would say from a general standpoint, it takes in the territory involved in 23130.

Q. Generally?

A. Yes, sir, generally.

Q. Now, you spoke about the reduction in the rates from the mines on the Milwaukee Railroad in the Brazil-Clinton and Linton-Sullivan Groups in Indiana to Rockford and Freeport after the decision in Docket 23130. You did not mention the rate from the Illinois Central mines in the Linton-Sullivan District to Rockford and Freeport. Do you know when those rates were reduced to the same level as the rates from the Milwaukee mines?

A. No, I couldn't give you the exact date, Mr. Wilkinson, but I think they were reduced after the St. Paul mine rates were reduced.

Q. And they were reduced to the same level as the St. Paul mine rates from the Linton-Sullivan District to Rockford and Freeport, is that right?

A. I think they were, yes.

Q. Do you have any idea as to the length of the haul via the Illinois Central from its Linton-Sullivan mines to [fol. 1581] Rockford as compared with the haul of the Milwaukee Railroad from its mines in the Linton-Sullivan District to Rockford?

A. Well, relatively, offhand, I would say probably that the Illinois Central mileage was longer.

Q. It is really considerably longer, is it not?

A. I couldn't say how much. I might be able to develop that specifically.

Q. Well, if you don't know——

A. I don't know offhand. It is in the exhibits. It could be determined very easily.

Q. Are any of those mines of the Illinois Central and the Milwaukee in the Linton-Sullivan District joint mines?

A. My exhibit will show that. I will have to look. Yes, there is a joint mine down there.

Q. So that when you figured your shortest tariff route from those mines——

A. Those mines, you mean the joint mine?

Q. Yes, from the joint mine, one where a mine is served by the Milwaukee and a mine is served by the I. C.—you used the distance via the Milwaukee Railroad, I assume?

A. I used the shortest, the same as I did in Illinois, from any joint mine in Illinois, the same identical method.

Q. Yes, but I say it was the distance via the Milwaukee Railroad?

A. To which point?

[fol. 1582] Q. Rockford, I am talking about Rockford now.

A. Yes, I used the St. Paul route.

Q. Now, are there any mines in the Linton-Sullivan District that are joint to the Milwaukee and the Pennsylvania?

A. Same point, Linton.

Q. What?

A. Same point, Linton.

Q. Let me ask you this: are there any mines joint to the Illinois Central and the Pennsylvania, that is, where you have a high rate and a low rate?

A. Yes, Linton, the one we are speaking of.

Q. Where you had a mine that had the low rate via one carrier and the short distance via another carrier with the higher rate, which one did you use as the shortest tariff route, the one with the lowest rate or the one with the shortest haul?

A. I used the one with the lowest rate uniformly throughout Illinois and Indiana.

Q. Irrespective of the length of the haul?

A. Yes, sir, I had to do that to get the proper level of the going rate.

Exam. Trezise: From the individual mine?

The Witness: Yes, sir.

Mr. Wilkinson: I understand this is just individual mines that are joint.

The Witness: Yes, sir.

[fol. 1583] By Mr. Wilkinson:

Q. Now, on page 4 of your prepared statement, I understand from the fourth paragraph, that your feeling is that the level of the rates generally from Indiana to all of the territory in Northern Illinois — substantially lower than the level of the rates from the Illinois origin groups to the same territory?

A. Yes, my exhibits show that conclusively.

Q. And that is your principal reason for complaining about these rate situations, is that it? That is the principal reason, because you claim that the level from Indiana to these destinations is lower than the level of the rates from the Illinois origins to these destinations?

A. That is right, yes.

Q. And your subsequent exhibits are for the purpose of demonstrating that alleged fact?

A. They do show it.

Q. Now, will you look at your Exhibit No. 23, page 21, and in the last column J thereon you show that on the average the rates from the Indiana groups to Dubuque, Iowa, are 96 per cent of the 23922 scale.

A. Wait a minute. You said Indiana. I think if you mentioned 96 per cent it didn't cover Indiana—oh, yes, it, does too. Pardon me. I see, yes, sir, that is right.

Q. Then you show just below that, that the rates from Western Kentucky average 102 per cent of the 23922 scale. [fol. 1584] A. Yes, sir.

Q. Then in the following line you combine Indiana and Western Kentucky and you show that together they are 89 per cent of that scale. Now, what mathematical formula did you use to arrive at the result that by putting 96 and 102 per cent together you got 89 per cent?

A. Well, I don't know whether that is an error or not, but I will tell you how I arrived at it. It may be an error. But I took all of the rates shown on this page from Indiana, there are ten Indiana rates, and two Kentucky rates. That makes twelve. I added those percentages up and divided them by 12. That is the method I used, and I did that throughout all my exhibits. Now, that 89 does look a little off, but I will be very glad to check back and see what it should be. If it is an error, I want it corrected, because I want the facts to be in here as near positively correct as they may be.

Exam. Trezise: That appears to be an error. You will check that.

The Witness: I will be glad to check that.

By Mr. Wilkinson:

Q. Now, when you arrived at that 96 per cent on the average, you did it, you say, by adding the percentages shown in the last column and then dividing by the number of rates?

A. That is right.

Q. Now, how did you arrive at the average rate and dis-
[fol. 1585] tance shown in your Exhibit No. 29? Now, I believe Exhibit No. 29 corresponds generally with Exhibit No. 23 and Exhibit No. 24, does it not?

A. Yes, sir.

Q. Over on page 14 of Exhibit No. 29 there is shown average rates and average distances and average earnings per ton-mile and average per cents. Now, how did you arrive at the average rate from the Illinois origins to the 12 suspended points, which you show here as $1.83?

Mr. Cardy: What page was that, Mr. Wilkinson?

Mr. Wilkinson: Page 14 of Exhibit 29.

The Witness: Well, just before I answer that question, Mr. Wilkinson, I want this to be clear, that you have talked previously about one particular destination, you remember that, Dubuque.

Mr. Wilkinson: Yes.

The Witness: You were talking about individual destinations then.

Mr. Wilkinson: Yes. I am asking a new question now.

The Witness: Now we are talking about 12 destinations. I took each individual page—for instance, we go back to Amboy on page 1,—I took the total of each column. As I have shown at Amboy, on page 1, there are 14 points that constitute ay in the last column a total of 1212. I did that from each page, and when I got all of those totals and
[fol. 1586] all of the number of points, I divided it, and that is how we arrived at our averages.

By Mr. Wilkinson:

Q. Now, I was asking you about the rate. I asked you not about the percentages or anything like that. I asked you about this $1.83 rate that you showed as the average from all of the Illinois origins to all of the suspended points.

A. Pardon me. I thought you were talking about the percentages. I will tell you how we got the rate. If you will refer to my Exhibit No. 27, starting at page 25, to and including 37, I just simply took the totals shown on those pages and the number of origins and divided the total by the number of origins to arrive at the rate.

Q. Now, you didn't treat your rates on page 14 of Exhibit 29 the same as you did the percentages?

A. Identically the same.

Q. Well, you didn't take and add up the 12 rates shown in Column C and divide by 12, did you, to arrive at this $1.83?

A. No, I didn't do that.

Q. But when you came to your percentages of the scale, that is what you did, isn't it?

A. I didn't have any percentages of the scale shown in my Exhibit No. 27.

Q. You didn't?

A. No. There is none in there.

[fol. 1587] Q. Now, when you come to the shortest tariff route mileages, you did not take and add the mileages shown in Column E of page 14 of Exhibit No. 29 and divide by the number of origin points shown there?

A. On page 14?

Q. Yes.

A. No. I arrived at the average mileage the same as I did the average rate. I took the total rate from the Illinois field and divided it by the number of origins and I did the same with the mileage. But understand, these earnings shown on page 14 are not the averages of the rates shown there. You understand that.

Q. I understand that fully. Now, what is your average under the Midland scale on a haul of 270 miles with a rate of $1.83? It is not 80 per cent of the Midland scale, is it?

A. No, I don't think it is.

Q. It is considerably less than 80 per cent of the Midland scale, is it not?

A. I don't know how much less it is.

Q. Well, do you have the Midland scale with you?

A. You misunderstand the exhibit. As I told you, just the sentence before this, these are not the averages of the rates shown. These are the averages of all the totals shown in my preceding exhibits. That is the only way you can get an average. If I had used the method which I think you [fol. 1588] are thinking about here, I would be taking an average of an average.

Q. Isn't that what you have done?

A. No, that is just what I haven't done.

Q. Do you have the Midland scale with you, Mr. Rozene?

A. No, I haven't.

Q. Well, going to your Column F and Column G on page 14 of Exhibit 29, do you have that?

A. Yes, sir.

Q. Could you tell me what the average ton mile earnings are for a haul of 270 miles and a rate of $1.83?

A. Well, offhand, it would be between six and seven mills.

Q. Yes. While you show in line 14 ten mills as the average ton mile earning under present rates to the 12 suspended points from origins in Illinois.

A. No, I do not.

Q. What does that ten mills mean?

A. That ten mills is the average from all of the points in Illinois, all of the rates in Illinois, to these 12 destination points, and it is correct.

Mr. Stadell: Those are actual rates?

The Witness: Those are actual rates.

Mr. Stadell: And not theoretical rates?

The Witness: That is correct.

By Mr. Wilkinson:

Q. What is the $1.83 an average of?

A. That is the average rate.

[fol. 1589] Q. Is that an average of theoretical rates?

A. No, sir. It is an average of all the rates in Illinois.

Q. It is an average of all the rates in Illinois to these 12 destinations?

A. Correct.

Q. And the 270 miles, is that the average of all of the hauls from all of the origins in Illinois to these 12 destinations?

A. Yes, sir.

Q. And the ton mile earnings, if I understand from your calculation just made, of $1.83 for a 270 mile haul, is somewhere between 6 and 7 mills?

A. Will you read the question?

(Question read.)

The Witness: Just forget everything on the page for a moment——

Mr. Wilkinson: Just answer that question.

The Witness: I am going to answer your question. As I stated before, $1.83 for a haul of 270 miles is between 6 and 7 mills. It has nothing to do with this page whatever.

Mr. Wilkinson: I didn't ask whether it has anything to do with the page. I just asked you the question.

The Witness: Well, I want it understood it has nothing to do with this page.

By Mr. Wilkinson:

Q. How do you determine, going back to your thesis on page 4 of your statement, that the level of the rates from [fol. 1590] Indiana *are* higher than the level of the rates within Illinois *are* to this territory, how do you determine the level of the rates?

A. It is very simple. I take all the rates from Indiana and the mileage applying in connection with each one of those rates, find the ton-mile earnings from those rates. When I get all of those computations made, I got a total and I have got so many factors. I just divide the total by the number of factors. Therefore, we get the average. We do that in Illinois, we do that in Indiana, like for like, and I tried to be very fair about it, and that is the way I have done it, I think. Now, avoiding mechanical errors, I think it is a very fair picture.

Q. Do you mean fair or do you mean you have applied a uniform method?

A. Both?

Q. Now, let us analyze this a little. In your method of making your determinations, when you determine the ton-mile earnings from Southern Illinois to any one of these points or to all of these points, you divided the average rate which you had determined from Southern Illinois by the average distance from Southern Illinois, did you not?

A. Are you speaking only of Southern Illinois?

Q. I am speaking just of Southern Illinois.

A. Yes, that is the short method of doing it, because if you did it the other way you would have the same identical [fol. 1591] answer. You have one rate. If there is no variation in the rate, you are bound to get the same answer.

Q. That is from Southern Illinois?

A. From Southern Illinois, and I did that from Princeton-Ayrshire, if they had the same rate.

Q. Now, when you took Southern Illinois, you had one rate and you determined your average distance and divided the rate by the distance?

A. That is right.

Q. Now, when you wanted to find Southern Illinois to all 12 of these points, did you merely add up the 12 rates and

divide by 12, and the same way with the mileage, add the mileage and divide by 12, or did you weight the distances and weight the rates by multiplying the rates by the number of origins in Southern Illinois to each of these 12 points and got the aggregate and then divided it by the total number of origin points in Southern Illinois?

A. That is the only way you could figure it. You have varying factors. You can't take $1.90 and $2.00 and have one lump sum. You have got to take the total and add it.

Q. Now, you have got varying factors, have you not, when you use Alpha and Southern Illinois?

A. Sure, that is why we take the total, just like I did.

Q. Is it not a fact, Mr. Rozene, at Alpha there is one origin?

A. That is right.

[fol. 1592] Q. And under the present rates it gives you a ton-mile earning of 12.7 mills from that one origin point of Alpha to all of these 12 destinations? That is shown at line 2.

A. Yes. I just want to look at the exhibit before I tell you whether it does or not. You are speaking of Exhibit 24?

Q. I am speaking of Exhibit No. 29, page 14, line 2.

A. Yes, 12.7 mills.

Q. Now, in your method of determining the average of ton-mile earnings for the state as a whole, that 12.7 carries as much weight in your average as your 5.8 from Southern Illinois?

A. No, that is just exactly what I am telling you, it doesn't.

Q. Well, add it up.

A. You can add these figures up and you won't get the answer. You have got to take the totals on the other exhibit, as I explained originally, in my Exhibit 27.

Q. Your Exhibit No. 27?

A. That is right.

Q. Now, we will go to your Exhibit No. 27. What page, Mr. Rozene?

A. Well, from 25 to 37, that is the method I used. Now, when you arrive at the ton-mile earnings, you would have to go back to Alpha—take Amboy, you have got 12.1, to Belvidere you have got 7.8.

Q. What exhibit are you looking at now?

A. I am talking about Exhibit No. 29.

[fol. 1593] Q. You are back at 29?

A. Yes. I showed you the method I used in Exhibit 27. Now, in order to arrive at 12.7 that I show here from Alpha, I went back to page 1 and I took 12.1 from Alpha. That is one factor. I took 7.8 to Belvidere. That is two factors. I took 13 mills to Byron. That is three factors. I took DeKalb, and so on. After I got the 13 and 12 total factors, I divided it by the number of factors and then arrived at 12.7. When I got down to the bottom, to the average on line 14, I took all of these total ton-mile earnings from all of the groups, added them together, and arrived at the factors and arrived at 12.7 mills. I don't know how you could do it any other way.

Q. So that on page 14 your 12.7 mills is the aggregate of the mills per ton-mile from Alpha to each of the 12 representative destinations added up and divi ed by 12?

A. That is right.

Q. And that applies to the others, this 5.8 from Southern Illinois is arrived at in the same way?

A. Same way.

Exam. Trezise: Is that the answer you want to make there?

The Witness: I am waiting for the rest of it. If he doesn't go ahead, I will finsh it for him.

Exam. Trezise: You said you divided it by 12 or 13.

The Witness: No, not 12 or 13. I divided it by the number of factors.

[fol. 1594] By Mr. Wilkinson:

Q. You divided it by the number of destinations to which there were rates from Alpha, that is what you did?

A. You are talking about Alpha now?

Q. I am talking about Alpha, yes.

A. Yes.

Q. Now, from Southern Illinois you divided whatever your aggregate was by the total number of these representative points to which there are rates published from Southern Illinois. I just want to make it clear that you didn't use 12 if there were only rates published to 11 of these representative points.

A. If there were only 11, that is all we used. Of course, I wouldn't say I used 12 if there were only 11.

Q. That is what I mean. Now, when you wanted to get the average of the rate from the origin groups in Illinois to these destinations, you didn't add up the rate from Alpha

to Amboy, Victoria to Amboy, Southern Illinois to Amboy, and divide them—we will just take Amboy—and divide that by 12, did you, or by 14?

A. The average rate? No sir, I did not.

Q. When you got your rates, you weighted it by multiplying the rate by as many origin points as there were in the group and then divided the total of that multiplication by the total number of origin points?

A. If you want to look at my Exhibit 27——

[fol. 1595] Q. I am just asking you.

A. I can describe it on page 27 of my Exhibit 27. I show total number of origins in Illinois, total rate, total miles, and I divided it up.

Q. I am trying to find out from you, Mr Rozene, what significance the rate and the distance arrived at as you have done here have in this case, in your oplnion?

A. Well, the average rate, Mr. Wilkinson, in my opinion, has no material—I would never give any average rate any consideration, because in my estimation an average rate doesn't mean anything as far as measuring levels.

Q. And the average distance doesn't mean anything in measuring hauls?

A. Oh, yes, it does; but the reason that the average rate—if it does mean anything to anybody, I will compute the average rate in identically the same way as I did the average distance.

Q. Then having computed the average rate and the average distance for the entire state, you don't think any consideration or attention should be paid to them, is that it?

A. Not the average rate, no, as far as measuring a level.

Q. Well, the average rate has nothing to do with the level of the rates, is that it?

A. No.

Q. And the average distance doesn't have anything to do with the level?

[fol. 1596] A. Very much.

Q. How do you use your average distance of 270 miles from Illinois origins to these destinations? What purpose does it play in this exhibit?

A. Well, it is a matter of information. 270 miles shows you the average distance from all of the Illinois points to the suspended points and it compares them with what the average distance is from Indiana, and I thought maybe somebody would be interested in the average distance from

all of the points to all of the destinations, and there they are.

Q. You thought they might be interested casually in knowing the average of the rates too, although you don't think it has much to do with it?

A. That is right.

Exam. Trezise: But you do attach some importance to the average distance from the individual groups?

The Witness: That is right, certainly.

Exam. Trezise: That is where you attach your importance in making your comparison?

The Witness: Certainly.

By Mr. Wilkinson:

Q. And you think that the average of the averages is much better in determining the level?

A. That is just what I am contending is not proper. Probably before this case is over we might be able to go into this thing a little further as far as averages are concerned. [fol. 1597] Q. In any event, Mr. Rozene, the figures which you show here as averages in line 14 on page 14 of Exhibit No. 29, they are not averages in the same sense of the word?

A. I don't know what you mean by that question.

Q. I mean this, they are not averages of the figures shown above line 14?

A. No. As I told you, they are the average of the totals from all these preceding pages. I might add here, I am sorry I didn't do it, but I had all these totals down, but we didn't have time to cut the sheets, but I have the sheets in the office and if it will eliminate a lot of misunderstanding, why, I will be glad to cut them and put them in here.

Q. That is what I am trying to eliminate, misunderstanding, so we will know exactly what you did and why you did it.

A. I think you know what we did.

Q. I am trying to find out why. I want to know, Mr. Rozene, why the total ton-mile earnings from all of these origins divided by the total number of origins to any given destination would not be the average of your ton-mile earnings from all origins to that destination, the same identical way in which you determined your average mileage from the origins to the destinations and your average rates from the origins to the destinations.

A. You want to know why it wouldn't be?

Q. Yes.

[fol. 1598] A. I can't explain why it wouldn't be. If I know anything about figuring, the only way I can get an average is to take a total. If I want to get an average of a certain number of factors, I add those factors up and divide by the number of factors. That is the only way I know of how to get the average. But I can't pick out two averages and average them together. It would be an average of two or three or four different averages and it doesn't mean anything to me.

Q. Well now, if you took all of your ton-mile earnings from each of the origins in Southern Illinois by other routes that you use to Alpha——

Exam. Trezise: Under every rate.

By Mr. Wilkinson:

Q. (Continuing): —under every rate that you used from Southern Illinois to Alpha, you did the same for DuQuoin and each of the other groups that you used here, added them all up and then divided by the total number of origin points in Southern Illinois, DuQuoin, and so on, and divide that number of origins into your total ton-mile earnings, would you not then have a result arrived at in the same manner in which you arrived at your average rates and your average distances?

A. No. You wouldn't.

Q. Why wouldn't you?

A. Because you are taking unlike things. You say, first take each one of the total ton-mile earnings and divide them by the total number of origin points in Southern Illinois.

[fol. 1599] Q. No, I didn't say that. I said that you take all of your ton-mile earnings for all of your groups and divide by the total number of origins in each of the groups.

Exam. Trezise: Didn't you say Southern Illinois a while ago?

Mr. Wilkinson: I started with Southern Illinois, all the origins in Southern Illinois, all the origins in DuQuoin, and so on, through the Illinois group.

Exam. Trezise: You are still confining it to Illinois?

Mr. Wilkinson: Oh, yes, confining it to Illinois right now.

Exam. Trezise: And you said that is what you did.

The Witness: No, I said that wouldn't be right. He is taking a certain number of factors and then putting in an arbitrary number of divisors.

Mr. Wilkinson: The same number of divisors you are going to have for your rates and mileages.

Exam. Trezise: You are going to have only one rate from each of these mines in the group.

The Witness: Yes, one rate from each mine.

By Mr. Wilkinson:

Q. Mr. Rozene, referring to page 37 of your Exhibit 27, you have the total number of miles from the groups in Illinois to these 12 representative destinations, have you not?

A. Yes, sir.

[fol. 1600] Q. And you have the total of the present rates to those destinations?

A. Yes, sir.

Q. Now, would not dividing that total rate by the total miles give you the total ton-mile earnings?

A. No.

Q. Why not?

A. You have got to get the total ton-mile earnings before you can divide them by anything. That is the only proper way to get it, get your total ton-mile earnings from these 2,339 points and then get your figures.

Q. You haven't got those figures worked out?

A. No. You would get the same answer if you took each group in Southern Illinois. If you got a rate of $2.00, why, figure out your ton-mile earnings from each of the points, and you get the same answer, if you divide it by the average from the Southern Illinois to that point, when the rate appears to be the same.

Q. Well, you don't think you would get the average ton-mile earnings for the hauls in Southern Illinois if you divided your total rate by your total miles?

A. From Southern Illinois, one group, you probably would.

Q. Well, divide all of Illinois, your total rate by your total miles.

A. No, you wouldn't.

[fol. 1601] Q. Well, that is the way you get it for Southern Illinois.

A. Well, you have got one individual factor.

Q. Well, you have got a lot of different rates.

A. Yes, and the rate for a certain distance, the ton-mile earnings for each distance.

Q. If you took Southern Illinois alone and you added up your total from Southern Illinois to Amboy, as on page 31 of your exhibit——

Mr. Stadell: What exhibit is this?

Mr. Wilkinson: This is Exhibit 27, his shortest tariff routes. You have shown there your total miles via the shortest tariff route and you show the average to each of these points.

The Witness: That is right.

By Mr. Wilkinson:

Q. Then you show down on line 14 an average of the distance?

A. That is right.

Q. Now, that 354 miles shown in column E is not arrived at by adding the figures above in column E and dividing by 12, but is arrived at by dividing the figure 231,867 shown at line 13 under Column D by the figure 655 shown at line 13 in column C, is it not?

A. That is right.

Q. And in like manner you arrived at the rate of $2.05 shown in line 14 under column F by dividing the 134,280 shown under column F by 655?

[fol. 1602] A. That is right.

Q. Now in this page you have not shown here either ton-mile earnings or percentages of any scale?

A. That is right.

Q. Now, if you wanted to find the ton-mile earnings from Southern Illinois to Amboy, you could do that by dividng the $2.00 by the 313, could you not, because you only have one rate there?

A. Yes.

Q. But you say that to determine the ton-mile earnings from Southern Illinois to these 12 destinations you would have to go through the work of determining the ton-mile earnings to each point, then adding up those ton-mile earnings and dividing by 12?

A. Yes, you get the same result.

Q. But that would not get the same result as if you divided 354 into 205?

A. I think you would.

Q. You think you would?

A. I think you would.

Q. But you don't know it?

A. I am positive you would.

Q. Now if I can arrive at the average ton-mile earnings from Southern Illinois to these 12 points by dividing 354 into 205 or 214, as the case may be, and you say that would [fol. 1603] give the correct answer?

A. It would probably give you the same as if you took each individual point.

Q. Well, would it be the correct answer?

A. If you are using one individual group.

Q. I am using just Southern Illinois.

A. Yes, I think it would.

Q. It would be correct?

A. Yes.

Exam. Trezise: It wouldn't be your method of calculating?

The Witness: No. We are just talking about one group now.

Exam. Trezise: It wouldn't be your method of calculating, but it would be the same answer as the method you have advocated?

The Witness: Yes.

Mr. Stadell: From that one group.

Exam. Trezise: From that one group.

The Witness: Yes, from that one group. Now, remember, that is an average ton-mile earning that we have arrived at.

By Mr. Wilkinson:

Q. Now, would that not be the same if you divided your total rate of 134,280 by your total miles of 231,867?

A. It should come out the same, yes.

Q. If it is proper from one group to 12 destinations, why [fol. 1604] isn't it proper from 12 origins to one destination?

A. Because you haven't got any totals yet.

Q. Any totals for what?

A. Are you going to lump the 12 destinations?

Q. You have lumped the 12 destinations on page 31 from one group.

A. You mean if we take the same with some other group?

Q. No, I am just asking you if that gives you the proper answer, from one origin to 12 destinations——

A. Oh, you are talking about 12 destinations now.

Q. I am talking about one origin to 12 destinations, page 31 of Exhibit 27, and that gives you the right answer. Now, I want to know why the same principle does not apply when I take one destination from 14 origins. I want to know what is the difference between having one origin and 12 destinations and one destination and 14 origins.

A. I don't understand your question.

Q. Permit me to come up and point it to you. Maybe I can clarify it. In Exhibit No. 27 at page 31 thereof you show in the top panel 12 destinations in Northern Illinois with the rates and mileages from Southern Illinois. In that illustration you have one origin group, with the rates and distances to 12 separate destinations, each destination having a little different distance from Southern Illinois than the other. Is that correct?

[fol. 1605] A. That is right.

Q. And you have varying rates from Southern Illinois to these 12 origins, is that correct?

A. 12 destinations, you mean?

Q. Yes.

A. That is correct.

Q. Now, you tell me that if I add up the mileages, as you have done, by getting the total miles to Amboy and the total miles to Polo and each of the destinations and get the aggregate of those mileages and the aggregate of the rates, and knowing the number of origin points, 655 of them, that I can determine the average rate, the average distance, and then by dividing those two together we will get the average ton-mile earnings that coal moves on in moving from Southern Illinois to these 12 destinations?

A. Yes, sir.

Q. Now, I want to know why, as a matter of mathematics, freight figuring, I cannot apply the same principle when I start with 14 origin groups moving to one destination, as shown on page 1 of your Exhibit No. 29, from all of the origin groups in Illinois to Amboy, Illinois.

A. I still don't understand what you are getting at, Mr. Wilkinson.

Q. I am not asking you to understand what I am getting at. I am asking you why you can't apply the same [fol. 1606] principle that you would apply from one origin to 12 destinations, from 12 origins to one destination.

A. From 12 origins to one destination?

Q. Well, it happens, Mr. Rozene, that you show here that there are 14 origin points in Illinois that ship to Amboy.

A. That is right.

Q. Now, I want to know why you can't apply the same principle that you told me over here on Exhibit 29 to the situation depicted in the first panel on page 1 of Exhibit 29. Maybe we can go off the record here.

I got those exhibit numbers wrong. One was Exhibit 27 and one was Exhibit 29.

Mr. Stadell: Are you assuming the rates are the same from all the groups?

Mr. Wilkinson: I am not saying they are the same.

The Witness: I confess I don't understand your question. Now, I will be glad to go off the record and try to find out what you mean.

Exam. Trezise: Well, let us be off the record a minute. We will have a recess.

(A recess was taken.)

Exam. Trezise: All right, gentlemen, let us continue.

By Mr. Wilkinson:

Q. Continuing, Mr. Rozene, our discussion during the recess, I now understand that in arriving at the ton-mile earnings which you show on page 1, for example, of Ex- [fol. 1607] hibit No. 29, you added the ton-mile earnings under the present rate and arrived at a total of 166 mills per ton-mile for all the origin groups in Illinois to Amboy.

A. That is right?

Q. Then you divided that by 14?

A. That is right?

Q. And that to arrive at the ton-mile earnings from the Illinois origin groups to all of the 12 representative destinations, you added the total ton-mile earnings from all of the groups to each of these 12 destinations?

A. That is right?

Q. And then to get your average for the state you divided that total by a total of all origin groups that published rates to these destinations, some 14 or 15, as the case might have been?

A. That is correct.

Q. So that your divisor in that instance was about 160?

A. It would be the total, the divisor would be the total from each of the groups there.

Q. The total number of groups that published rates?

A. Yes, that is right.

Q. Now, I understand further that you used the same method in determining the average ton-mile earnings under the suspended rates?

A. Yes, sir.

Q. You have told us before how you arrived at your aver- [fol. 1608] age distances and average rates from the groups to each individual representative point and from the groups to the entire state. When you arrived at the average distance your divisor was 655 because there are that many origin points from which rates were published that you used?

A. That is right.

Q. And when you arrived at your divisor for the ton-mile earnings you used the number of groups from which rates were published to the destinations?

A. That is right.

Q. So in the one instance you used the number of points from which rates were published and in the other you used the number of groups from which rates were published?

A. Yes, because you would probably get the same result, I think you would, whether you used one or the other.

Q. But you haven't figured it out?

A. I am pretty sure you would.

Q. I say you haven't figured it out?

A. No, I haven't.

Q. Now, in your Exhibit 29 at page 1 you show under Amboy certain percentages that the present rate is of the Midland scale?

A. Yes, sir.

Q. Is that correct?

A. That is right.

Exam. Trezise: That is the Midland scale brought up to [fol. 1609] date?

The Witness: Yes, sir.

Exam. Trezise: Thank you.

By Mr. Wilkinson:

Q. Then on line 18 of page 1 you show an average of 84.

A. That is right.

Q. Now, that average of 84, is it the relationship of an average rate of $1.82 per ton for an average haul of 252 miles, under the Midland scale?

A. I don't know.

Q. Have you got a Midland scale with you?

A. No, sir.

Q. I show you a copy of the Midland scale which has been increased by 15 cents per ton and ask you what percentage of that scale a rate of $1.82 would be for a haul of 252 miles?

A. Well, approximately 71 per cent.

Q. In your Exhibit No. 29 on page 1 you show that average under column H at line 18 as being 84 per cent.

A. That is right.

Q. Of the Midland scale.

A. That is right. An entirely different method was used than what we just mentioned here in arriving at that 84 per cent.

Q. Now, in arriving at the 84 per cent, did you follow the same method which you have just described, by which you obtained the average mills per ton per mile shown in column F at page 1?

[fol. 1610] A. Yes, sir, I did.

Q. And on page 14 of your Exhibit No. 29, under column H, you show that the average rate from all Illinois origin groups to the 12 representative suspended points is 80 per cent of the Midland scale, is that correct, shown opposite line 14?

A. That is right, yes, sir.

Q. And if you excluded Belvidere it would be 81 per cent as shown opposite line 15?

A. That is right.

Q. Showing you the Midland scale again, I will ask you what percentage a rate of $1.83 for an average haul of 270 miles would be of the Midland scale.

A. Around 70 per cent. That would represent a relationship to an average rate.

Q. Do you have any exhibits that show for each group the percentage of the rates to the individual destinations in the same manner that you showed your ton-mile earnings?

A. From each origin group to 12 destinations?

Q. To each of the 12 destinations.

A. No, that is the only one I have.

Q. Now, is it a fact that in arriving at this percentage of 80, did you add up the figures above the 80 appearing in column H and dividing that total by 12?

A. No.

Q. Is what you did this——

[fol. 1611] A. The same as I did with the ton-mile earnings, as we went through before.

Q. You worked it out to each point and then got the total for each point and totaled the total and divided by the number of points that published those rates?

A. Yes, sir, the number of total groups, yes, sir.

Q. Now, in your Exhibit No. 23 you have shown the rates, short tariff route mileages, as taken from the carriers' exhibits 3 and 4, have you not?

A. Yes, sir.

Q. In column C, D and E?

A. Yes, sir.

Q. And you have shown the ton-mile earnings under those rates in columns F and G, is that correct?

A. Correct.

Q. Now, were those ton-mile earnings taken from carrier exhibits or did you work them out?

A. I worked them out.

Q. In columns H to J on Exhibit 23 you have shown the percents of the Midland scale, you have shown the scale rate and the percents that the other rates were of it, the Illinois and the Indiana rates?

A. Yes.

Q. Now, you have shown on line 17, page 1, an average 11.9 for the mills per ton-mile under the present rate to Amboy.

[fol. 1612] A. Yes, sir.

Q. You arrived at that figure by adding the figures preceding it in column F?

A. Above that, yes.

Q. And dividing by the number of origins from which rates were published?

A. Yes, sir.

Q. You did the same in arriving at the figure 84 shown in column I on line 17, did you not? You added the percents of the Midland scale and divided by the number of figures above?

A. That is right.

Q. And that is true with respect to column J, column L, and column M, is it not?

A. Yes, sir.

Q. And also column G?

A. Yes, sir.

Q. In other words, you used the same method here in arriving at mills per ton-mile and average percents of these two scales as you have previously described in discussing Exhibit 29 and Exhibit 27?

A. Yes, sir.

Q. And you applied, by the way, in both of these exhibits 29 and 27 and now 23, you did the same thing for Indiana that you did for Illinois?

A. That is right.

[fol. 1613] Q. You treated both states the same in that respect?

A. That is right.

Q. Exhibit No. 24 is a summary of Exhibit No. 23, is it not?

A. That is right.

Q. And the first page of Exhibit 24 through column K shows the same information as the first 14 lines at the top of page 14 of Exhibit 29, except that in Exhibit 24 you are dealing with the rates and distances via the average short tariff routes, while in Exhibit No. 29, you are dealing with rates and distances via the shortest tariff routes?

A. Yes, except 24 goes a step farther than page 14 of Exhibit 29. It shows the totals.

Q. Yes, it shows totals, but the ton-mile earnings and the averages of the Midland scale are comparable, are they not, and in Exhibit 24 it shows that you added up the ton-mile earnings, as shown in Exhibit No. 23, and divided by 167?

A. That is right.

Q. And it show that in obtaining the average percentages of the Midland scale you divided the total percents shown in Exhibits 24 by the same 167?

A. That is right.

Q. To arrive at 79?

A. Yes.

Q. Now, page 2, the top panel, of your Exhibit No. 24, is identical, so far as the average ton-mile earnings and the [fol. 1614] average percent of the Midland scale, with lines 16 to 23, inclusive, on page 14 of your Exhibit No. 29?

A. Yes. This exhibit is just the same as the exhibit you are speaking of there. Only the method of figuring the distance is different, that is all.

Q. Now, I note that in Exhibit No. 29, you have used as an origin group in Indiana Bedford.

Mr. Vesey: What page are you referring to?

Mr. Wilkinson: Well, that appears on all of the pages. You will see it on page 4 for the last Indiana origin group. That is true, is it not?

The Witness: Yes, Bedford is in there.

By Mr. Wilkinson:

Q. Now, in Exhibits Nos. 23 and 24 did you use Bedford?

A. No, 23 and 24 is taken from the carriers exhibits and they didn't show Bedford.

Q. So that so far as Indiana is concerned, Exhibits Nos. 23 and 24 are not identical in their contents, except for the difference in the way of figuring mileage, with Exhibit No. 29?

A. No. Bedford is included in that one exhibit where it isn't in the other.

Q. Then in all other respects, Exhibit No. 23, Exhibit No. 24 and Exhibit No. 25 are computed in the same manner in which you have made your computations in Exhibit No. 29?

A. All the computations are like for like.

[fol. 1615] Q. And I should tie into Exhibit No. 29, Exhibits Nos. 27 and 28—those are your short miles.

A. Wait a minute, 27 and 28——

Q. Those are the details of arriving at the average distances via the short tariff route.

A. What are you tying it into—Exhibit No. 24?

Q. No. Exhibit 27 and Exhibit 28 tie into Exhibit 29 in the same way that the carriers' exhibits 3 and 4 tie into Exhibit No. 23, is that correct?

A. Well, there is information probably shown on Exhibits 3 and 4 that I haven't used.

Q. Well, I know, you didn't use all of it, but as far as the rates and distances are concerned.

A. The principle, yes.

Q. And this chart which you show, which is Exhibit No. 26, so far as the exhibit deals with ton-mile earnings of various scales, is based upon the data shown on your Exhibits Nos. 23, 24 and 25?

A. That is right.

Q. And in like manner the charts which you show on pages 15 and 16 of your Exhibit 29 are based upon the data shown in that exhibit?

A. That is right.

Q. Now, I note, Mr. Rozene, that we have West Kentucky represented with us here this morning, and that calls my [fol. 1616] attention to this question. Are you familiar with the evidence in the pending case known as the Rates from West Kentucky to Chicago and Points in the Northwest, now pending before the Interstate Commerce Commission?

A. Yes.

Q. You have sat through and been a witness in that case, I believe?

A. Yes, sir.

Q. Now, do you believe that just using a mileage comparison represents or is a correct basis for comparing the rates from Western Kentucky and the rates from Southern Illinois to this destination territory?

Exam. Trezise: You mean using mileage only?

Mr. Wilkinson: Only, yes.

The Witness: No, I don't believe it is.

By Mr. Wilkinson:

Q. When you compare the rates from Western Kentucky and the rates from Southern Illinois, comparing only ton-mile earnings or distance or relationships under the Midland scale, you are in fact comparing those rates solely on a question of distance, are you not?

A. Yes, sir.

Q. And you don't believe that is a proper comparison as between Southern Illinois and Western Kentucky, as I understand it; there are other factors to be considered?

A. There are other factors to be considered, yes, between [fol. 1617] West Kentucky and Southern Illinois.

Q. That same thing is true as between Western Kentucky and Springfield or any of the other Illinois groups?

A. Yes.

Q. I will ask you this: do you believe that it is proper to compare the rates from Indiana and Western Kentucky into this territory solely on the basis of distance?

A. Well, I think the same applies to Indiana that I stated as to Illinois.

Q. So that believing that, Mr. Rozene, why did you put Indiana and Western Kentucky together to make comparisons in your Exhibits Nos. 23, 24, 25, 26 and 29?

A. Just to show what the level would be based on these distances from Indiana and Western Kentucky combined. That is all.

Q. But you did not want the Interstate Commerce Commission to make a decision in this case predicated upon what you consider an improper comparison, did you?

A. I haven't asked the Commission—I just put these up here to give the Commission a picture of the whole situation.

Q. But you didn't want the Commission to act on it?

Exam. Trezise: Wait a minute. Have you said that mileage was an improper consideration? Let us get this clear now.

The Witness: I said it would be improper to measure Southern Illinois and the Illinois fields and the Indiana fields with West Kentucky on the basis of mileage only.

[fol. 1618] Exam. Trezise: That is right. But mileage is a factor, you think?

The Witness: It is an important factor.

Exam. Trezise: And if you make a comparison by mileage, that is not improper, is it?

The Witness: No, sir.

Exam. Trezise: Let us get that straight now.

By Mr. Wilkinson:

Q. Let us get it straight. All other factors should be considered in making a comparison as between the two groups?

A. If there were any other factors, they should be, yes.

Mr. Stadell: You mean transportation factors?

The Witness: Transportation factors, yes, sir.

By Mr. Wilkinson:

Q. Now, you have not made any attempt here so far, Mr. Rozene, to show what the transportation conditions are in the haul from Western Kentucky to these destinations as compared with Southern Illinois, have you?

A. No, sir.

Q. But you believe that those transportation conditions should be known in order to use a distance comparison properly?

A. If you are considering Western Kentucky and Illinois, yes, sir, I think they should be considered.

Q. Well, do you want the Interstate Commerce Commission to consider the information that you have put in here about Western Kentucky without considering the other [fol. 1619] factors of transportation conditions?

A. No, I wouldn't expect them to do that.

Q. You wouldn't want them to do it, would you?

A. No.

Mr. McElroy: In grouping Western Kentucky and Indiana, did you do that having in mind the carriers' 13th Section petition?

The Witness: That is why it was done.

Mr. Stadell: But you assumed the burden was on them to show any transportation conditions, if the Commission thought that was necessary?

The Witness: Yes, sir.

Mr. Stadell: Or any difference in transportation conditions, I should have said.

Mr. McElroy: Are there any other interstate rates in this territory besides the Indiana rates and Western Kentucky?

Mr. Kaier: Illinois to Iowa.

Mr. Bather: Also the rates from Harrisburg into Rockford, that move out of Indiana over the Illinois Central.

Mr. McElroy: I will except those so-called Illinois interstate rates. There are no interstate rates involved in this case related to the 13th Section petition, with the exception, as I understand, of the Indiana rates and Western Kentucky rates?

Mr. Kaier: You would have Illinois to Beloit too, Mr. [fol. 1620] Examiner.

Mr. McElroy: Yes.

By Mr. Wilkinson:

Q. You were going to check up, Mr. Rozene, what appears to be an error in Exhibit 23, that I pointed out, on page 21. While you are checking that, will you also check your Exhibit No. 25 and ascertain how under your method of figuring, how the average of the suspended rates from In-

diana to Beloit can be 77 per cent of the Midland scale, Western Kentucky 77 per cent of the Midland scale, and when you put them together they are 76 per cent of the Midland scale?

A. Obviously, that is an error. I will check it up, though, and give you a correct figure.

Q. Now, on page 8 of your prepared statement and throughout your discussion of these short tariff route distances, you said that computing short tariff route distances results in a duplication of routes. That was one of your statements in support of your use of shortest tariff routes. Is that a correct statement, Mr. Rozene?

A. I think so, yes, sir.

Q. Now, as a matter of fact, the routes are not the same, and that is why you want to use shortest tariff routes, isn't it?

Exam. Trezise: You meant not a complete duplication?

The Witness: Yes, sir, it is not a short tariff route; if you are using two routes, why, one of the two is going to be short and it is not the shortest.

[fol. 1621] Exam. Trezise: You didn't mean it was the same. It was an additional route rather than a duplicate route?

The Witness: Yes, an additional route.

By Mr. Wilkinson:

Q. I just want to find out that we both use the same language, because duplication means identical. Now, you would like to change that statement from a duplication of routes to additional routes?

A. That is right.

Q. Now, the four principal carriers that serve and originate coal in Southern Illinois are the Illinois Central, the C. B. & Q., the Big Four, and the Missouri Pacific, are they not?

A. Yes, sir.

Q. I believe you stated somewhere in your testimony that there had been a change since 1931, I think you said, and that today instead of the C. B. & Q. carrying the largest percentage of the tonnage that originates from Southern Illinois, that it originates and moves over the Illinois Central, is that correct?

A. I didn't say today. I said in recent years it shifted.
Q. Well, in recent years?
A. Yes.

Exam. Trezise: You mean to all destinations?
The Witness: To all destinations, yes, sir.

By Mr. Wilkinson:

Q. And I believe that for the year 1941 you stated that the Illinois Central originated something like 47 per cent [fol. 1622] of the tonnage that moves out of Southern Illinois wasn't that approximately the figure?
A. Well, yes.

Mr. Stadell: 37 per cent, wasn't it?
The Witness: 37.

By Mr. Wilkinson:

Q. 37 per cent?
A. Yes.
Q. Now, that other 63 per cent originated principally on these other three carriers I named, although the C. & E. I. moved some slight percentage?
A. Yes, sir.
Q. Do you know whether or not from a mine that is served by the Illinois Central, the C. B. & Q., New York Central, the Missouri Pacific, that such a mine always ships its coal to Rockford, for example, via the shortest route between such mine and Rockford?
A. I don't know that.
Q. Do you know whether or not it does in fact move over all of those carriers?
A. I don't know what routes it moves over.
Q. Do you know whether the carriers with the longer routes from these joint mines move any coal into this destination territory?
A. With the longer routes?
Q. Yes.
[fol. 1623] A. I say, I don't know what routes they move over.
Q. Well, do you think it would be fair to assume, for the sake of this record, that the carriers originated coal in substantially the same proportion for delivery in this desti-

nation territory as they do generally from the Southern Illinois group?

A. I couldn't make a statement as to that.

Q. You wouldn't want to make that assumption?

A. No. As I say, I don't know how it moves.

Q. And the same way, you would not want the Commission to assume that the coal all moves over the line of the carrier having the shortest tariff route?

A. I haven't asked them to do that.

Q. You are not asking them to do that either. You were in the railroad business some years ago?

A. Yes.

Q. And had considerable to do with coal traffic, didn't you?

A. I was in the coal traffic department, that is, I was not in the coal traffic, but I had a lot to do with coal rates and checking rates.

Q. You know from your general experience, do you not, that coal moves irrespective of whether it is moving on the shortest route or the longest route, don't you?

A. Yes, sir.

Q. And that the length of the haul would not normally affect the movement of coal providing the rates were the [fol. 1624] same, you know that from your experience?

A. Yes, I know that.

Q. Now, is it not a fact, Mr. Rozene, that in Indiana there are very few mines served by more than one carrier?

A. There are not as many as there are in Illinois.

Q. Well, relatively there is not really as many in Indiana as there are in Southern Illinois, is there?

A. You have less joint mines in Indiana.

Q. You only have three or four, as a matter of fact, is that right?

A. I don't know. I haven't counted them up. I can give you the origin points, if you want it.

Q. Now, speaking of origin points and short tariff routes, did you consider in your shortest tariff route average origin points or mines?

A. Tariff origin points.

Q. Tariff origin points?

A. Right.

Q. Now, do you know that a point like Herrin, Illinois, for example, which is served by several of these railroads, that each of the railroads that serves Herrin serves each

of the mines located at or near Herrin and which is billed from Herrin?

A. No, I don't know that they all serve the same mine.

Q. Well now, let us take an example. Suppose mine A [fol. 1625] near Herrin, with Herrin as its billing point, is located on the C. B. & Q. Railroad.

A. Yes, sir.

Q. And mine B, with Herrin as its billing point, is located on the line of the Illinois Central Railroad.

A. Yes, sir.

Q. And there are no switching arrangements down there.

A. That is right.

Q. Can mine A ship coal over the Illinois Central at, we will say, the $2.00 rate to Rockford? Mine A is on the C. B. & Q., local to the C. B. & Q.; mine B is local to the Illinois Central. Now, does the Illinois Central get in and originate any coal at mine A?

A. No, it couldn't.

Q. Nevertheless, in your exhibits, because those two carriers serve Herrin as a billing point, you have used the Illinois Central mileage where it is the shortest, haven't you, for both those mines?

A. No, I haven't.

Q. Then why did you say you figured it from the billing point?

A. The shortest tariff route from each of the tariff origin points. For that one situation that you just mentioned, that there are no track connections at Herrin, so I have had to show Herrin twice, once over the C. B. & Q., to take care of that situation from mine A. So it is in here from mine A——

[fol. 1626] Q. What page of what exhibit does that show on?

A. Look at page 27.

Q. Page 27 of what exhibit?

A. Exhibit 27, I mean, page 1, line 20 and 21. Now, following lines 20 and 21 throughout the exhibit, you will find I computed the distance over both the C. B. & Q., and the I. C. to take care of the situation you mentioned.

Q. Is that the only place that exists?

A. That is the only place I know of.

Q. How about Orient?

A. I have got Orient in twice to take care of the same situation.

Q. So that the statement that you took the shortest tariff route from an origin point is not quite correct?

A. It is correct to the extent that this method has been criticized before, and that is why we put this in. I think in a previous case we eliminated one of the two points, and you criticized it because the traffic couldn't move over all the routes that we showed. So that is why I put these in there, showing it can move over all these routes.

Q. So that instead of your showing the shortest route from a billing point, you have in fact in your Exhibit 27 shown the shortest route from mines served by more than one carrier?

A. Not mines, no; tariff origin points.

Q. But applying it to the individual mines?

[fol. 1627] A. That is right. If we eliminate Herrin, we probably eliminate the long route out of Herrin and decrease our mileage.

Q. The same thing is true of Christopher?

A. Yes, the same thing is true there.

Q. And it would be true in several others?

A. Yes, sir.

Q. Now, the mines at Marion, I understand, are actually served by each of the three railroads shown at Marion on line 25?

A. Not necessarily.

Q. But you have only shown one.

A. Well, there are switching arrangements down there.

Q. And the same type of information will show in Exhibit 28, I assume.

A. Yes. Incidentally, talking of Exhibit 27, you overlook Zeigler, where we are compelled to use it four times on account of no track connections. Now, we could eliminate three of those routes and materially reduce our distance also.

Q. Now, does track connection always mean joint rates?

A. Not necessarily—switching arrangements.

Q. So when you said track connections, what you really meant was switching arrangements?

A. No. Your criticism in previous cases has been that we computed these mileages and couldn't move the traffic over them. So in order to avoid your criticism we have had to use Zeigler four times, and the cars go right under the [fol. 1628] tipple on the same track, regardless whether it is going on the C. B. & Q. or I. C. or Missouri Pacific.

Q. But the Burlington doesn't take cars out put in by the Illinois Central, or vice versa?

A. No, I understand you have got a consolidated switching arrangement down there, where one railroad pulls one week and the next week some other line pulls. That is my understanding. I don't know whether it is in effect or not.

Q. But where, for example, shipments are made out of the mines at Marion to Amboy, Illinois, the mileage you have used of 299 miles is the mileage via the Illinois Central Railroad, is it not?

A. To where?

Q. To Amboy, on page 1 of your Exhibit 27.

A. No, that is a route via Missouri Pacific to Herrin and the I. C.

Q. Herrin and the I. C.?

A. Yes.

Q. Now, you want the Commission to use that route even if all of the coal from that particular mine should move via the C. & E. I. over a longer haul, is that right?

A. For rate making purposes, yes, sir.

Q. You don't want to have the rates made that measures the service performed by the carriers or that the carriers hold themselves out to perform, the minimum service that [fol. 1629] they hold themselves out to perform?

Exam. Trezise: You mean sort of the weighted average distance on the tonnage?

Mr. Wilkinson: No. I am asking if he is not asking the Commission not to consider the minimum service that each carrier holds itself out to perform in this territory.

The Witness: Do you consider service when you figure your shortest tariff routes or short tariff routes?

Mr. Wilkinson: It is the minimum that each carrier performs or holds itself out to perform.

The Witness: That is the thing. You have the rate there.

By Mr. Wilkinson:

Q. Not if it moves over the C. & E. I., have you?

A. You can find instances like that all over Indiana and Illinois and Western Kentucky.

Q. Well, I was just trying to get your theory.

A. Sure, that is correct, for rate making purposes, we want to use that route.

Q. Now, that is for rate making purposes, and that is much along the lines that you and the Examiner were discussing last week, where you said that for rate making purposes the Commission could well use the nearest point in any rate group. You advocated that and told the Examiner last week you thought that would be all right?

A. In view of the statement I made Saturday morning [fol. 1630] before I took my cross-examination? Let us not go into that again.

Q. I am not getting into the H & H scale at all, Mr. Rozene.

Exam. Trezise: Didn't you rather renege on that a little?

The Witness: I did. I made the statement we didn't advocate those mileages shown in column A of Robertson's Exhibit 1 because they are not what I thought they were.

By Mr. Wilkinson:

Q. Now, also for rate making purposes you thought it would be well to use or they properly could use distances over these so-called reasonably short tariff routes shown in your Exhibit No. 30, I believe?

A. Yes, sir.

Q. And you think that it would be proper to consider those distances for the purpose of making the rates, but you wouldn't expect the carriers to move the coal over such routes?

Exam. Trezise: Now, didn't you say the short tariff routes? They are not tariff routes.

Mr. Wilkinson: Not tariff routes. They are the short routes shown by your combination red and blue lines.

Exam. Trezise: They are not tariff lines.

Mr. Wilkinson: They are not tariff lines—short routes. Strike that question. Let us get it clear.

By Mr. Wilkinson:

Q. I understand that you figure for rate making purposes using the distances that would be computed over the lines shown on your Exhibit No. 30 made up of the red line and the blue line, that is, a red line up to its junction with the [fol. 1631] blue line, and then the blue line?

A. That is right.

Q. But that you would not expect the carriers to move the coal via the routes of the red and blue lines?

A. Well, how could any coal move via the L. & N. mine when there is no production there? How could any coal move via the B. & O. when there is no production on the B. & O? How could it move—very little, probably only one per cent, from the C. & E. I. I don't think there would be any short-hauling of traffic when there is no coal produced at those points.

Exam. Trezise: Mr. Rozene, Mr. Wilkinson wants to know whether the Commission should give absolute consideration to the distances that you figured on Exhibit 30, using the red and the blue line, or as the Examiner understood you to state, the Commission should give some consideration to the fact that there are shorter routes. Now, I think he wants to know whether or not you want the rates fixed absolutely on that short distance or whether you merely want the Commission to give some consideration to that. Now, which do you want?

The Witness: We have shown these routes to show the extreme circuity in our shortest tariff routes. We are pointing out to the Commission some of these routes and when they are making these rates we want the Commission to give consideration to these unduly long circuitous routes.

By Mr. Wilkinson:

Q. That is all you want them to give consideration to, the [fol. 1632] fact that there are routes over which this traffic could move that are shorter than the present short tariff routes?

A. That is right.

Exam. Trezise: Shortest tariff routes?

Mr. Wilkinson: I mean shortest tariff routes.

The Witness: That is right.

By Mr. Wilkinson:

Q. Is that any different from the fact that you want the Commission to give consideration to the fact that from some of the mines in Illinois and a few in Indiana more than one carrier serves such mines, and you want them to consider that it would be possble for all of the coal from such joint mines to move over the shortest route, the route of the carrier having the shortest line from that origin to destination?

A. It is possible to move it over that route, but we are not asking them to move it over that route.

Q. Well, are you asking the Commission, in the words of the Examiner, to use the shortest tariff route as the absolute measure, or is it merely another factor to be considered?

A. We want them to use our shortest tariff routes with due consideration to the long circuitous routes.

Q. You want them to use your shortest tariff routes and then to whittle a little off of that by considering the fact that they are somewhat circuitous, that is, you want them to whittle it down a little more in the consideration?

[fol. 1633] A. We want them to give it consideration. How much, that is up to the Commission to decide. In other words, we want them to do just what you wanted them to do in 23130.

Q. And you know what the Commission told us——

Exam. Trezise: Well, that is not in the record here. Let us get something that we can get a hold of.

By Mr. Wilkinson:

Q. Now, you referred to what we wanted them to do in some other docket. Is it or is it not a fact that there are circuitous routes from Indiana into this territory, the destination territory involved?

A. Well, I haven't made a check of the long routes from Indiana recently, but I know one thing, that you have got some very short direct routes from Indiana mines, and the record will show that there is one route in particular where there is no traffic moving over it and it is really a very ridiculously short route.

Q. Ridiculously short?

A. Ridiculously short route.

Q. Now, what makes a route ridiculously short under the theory set out in your Exhibit No. 30 and as explained by you in connection with Exhibit 30?

A. I will give you an example of the route in Indiana that I think is——

Q. No, answer my question, Mr. Rozene.

A. I am going to. You asked me what I think a ridicu-

[fol. 1634] lously short route is and I will tell you.

Mr. Wilkinson: Will you read the question, please, to Mr. Rozene.

Exam. Trezise: Well now, the Examiner hardly understands a route can be ridiculous. Now, isn't there some other word you can use? If you are going to describe ridiculous, that may turn out to be ridiculous. Now, what do you mean by "ridiculous"? Can't you use another term?

The Witness: I probably should have said the route was so extremely short compared with the normal route that they had in there before this route was established, that it just doesn't seem possible that any objection should be made to some of the routes that I have suggested from Illinois when they have such routes in Indiana.

Mr. Wilkinson: Have I made any objections to any of your routes, Mr. Rozene?

The Witness: You are asking me if I want the carriers to haul the traffic over the routes I have suggested, and I told you, no.

By Mr. Wilkinson:

Q. That isn't what I asked you. Now, listen, Mr. Rozene. I asked you if you want the Interstate Commerce Commission to establish rates on the basis of the distances shown by these routes in Exhibit No. 30 made up of the red and blue lines, that is, the red line up to the junction of that line and the blue line, and thence to destination?

[fol. 1635] A. Well, in that one case, the map on the first page, I would say, yes.

Q. I would say all of the maps.

A. No. I want them to give consideration to it.

Q. You merely want them to consider it?

A. That is right.

Q. Now, I asked you next if you wanted the Commission to use the distances via your shortest tariff routes as the absolute distance to be used, and I understood you to say, no, that you want them to use the distances via your shortest tariff routes and then temper that consideration by a further consideration of the distances via the routes shown in your exhibit No. 30?

Exam. Trezise: You said that two or three times, I think.

The Witness: Yes.

Mr. Wilkinson: Well, I haven't quite understood it.

Exam. Trezise: Well, you say it now, do you?

The Witness: I will say it now, yes.

Mr. Wilkinson: All right. Now, we understand each other.

Exam. Trezise: Gentlemen, we will adjourn at this time until two o'clock this afteroon.

(At 12:30 o'clock P. M. recess taken to 2:00 o'clock P. M.)

Afternoon Session

The hearing was resumed pursuant to recess.

2:00 o'clock P. M.

Exam. Trezise: All right, gentlemen, when you are ready [fol. 1636] we will proceed.

HARRY A. ROZENE resumed:

Cross-examination (Continued).

By Mr. Wilkinson:

Q. Mr. Rozene, will you look at your exhibit 28, page 12, first page. What is the significance of the reference mark C after the New York Central Railroad?

A. That is the way the New York Central shows their line in the tariff naming the rate.

Q. I see. So far as this exhibit is concerned, then, it has no particular significance?

A. No. It is just the name of the railroad, that is all.

Q. And where you show NR in Column D, it means there is no rate from that origin point to Amboy?

A. Yes, sir.

Q. But there might be a rate from that origin point to some other one of the destinations? For example, there is a rate from King mine to Belvidere, but no rate to Amboy, is that correct?

A. That is correct, yes, sir.

Q. You gave some tonnages of coal that originated in the Princeton-Ayrshire Group in Indiana. I don't believe it was in your prepared statement. You gave those tonnages afterwards.

A. Yes, sir.

[fol. 1637] Q. Showing the total tonnages from the Princeton-Ayrshire Group and the tonages on the Southern Railway and the tonnages that originated on the AW&W Railway and moved via the Southern?

A. Yes, sir.

Q. Do you know whether or not all of the coal that originated on the Southern Railway and the AW&W that moved via the Southern moved to these destinations that are involved here?

A. I didn't say that it did.

Q. I didn't ask you that. I asked you if you knew.

A. No.

Q. Do you know whether any of it moved to these destinations?

A. No, sir.

Q. Do you know whether or not any coal from the Princeton-Ayrshire Group moved to any of these destinations?

A. I couldn't testify as to any coal from any group, how much moved to these destinations.

Q. Now, in your discussion of the rates from Southern Illinois and Indiana to Wisconsin, you stated that the rates from Southern Illinois were increased in September of 1924 and that the rates from Indiana to Wisconsin were not increased until July 1, 1925.

A. July 19th.

Q. July 19th, 1925. Now, is it or is it not a fact, Mr. Rozene, that at the time the rates from Southern Illinois to [fol. 1638] these Wisconsin destinations were published by the carriers pursuant to the decision in 89 ICC that the carriers were concurrently engaged in trying to work out an adjustment of the general increases and decreases in the rates from this territory, that is, Illinois, Indiana, to destinations in Northern Illinois, Wisconsin, Iowa, et cetera, to equalize the disruption of the differential that had resulted from the general advances and reductions?

A. Yes, they were negotiating at that time to establish the differentials that were in effect prior to August 23, 1920. However, they didn't equalize them after they did publish them.

Exam. Trezise: Some of these gentlemen can hardly hear you fellows. You are so close together. We will have to get you farther apart.

Mr. Wilkinson: I can raise my voice.

By Mr. Wilkinson:

Q. Is it not a fact, Mr. Rozene, that the carriers published rates from the Indiana mines and also from the Illinois mines to these points in Wisconsin along in November and

December of 1924, two or three months after the rates you here talked about were published, and were not those rates suspended by the Interstate Commerce Commission

A. As far as Indiana is concerned, I couldn't answer it, but they were from Illinois. But I don't believe they were published from Indiana.

Q. Is it not a fact that these rates that you referred to [fol. 1639] here as becoming effective July 19, 1925, were they not the rates published in the so-called Blue Book Adjustment that became effective at that time?

A. Well, they were the Blue Book rates, but I think there were some modifications after the original Blue Book was first published.

Q. But those rates that became effective July 19, 1925, had been before the Suspension Board of the Interstate Commerce Commission, had they not, and were published with the approval of the Suspension Board after some modifications of the original publications that had been suspended in December of 1924?

A. I don't know whether they were approved by the Suspension Board or not. There was no order that came out on it, and I couldn't say. That is, there was no order ever issued in that suspension case. However, I will say this, that they were established over the vigorous protest of the Illinois producers.

Q. Now, is it not a fact, Mr. Rozene, that these rates that became effective on July 19, 1925, to these destinations that were covered by the Blue Book publications in practically all instances carried the differential adjustment of Brazil-Clinton 30 cents under Southern Illinois, is that right?

Mr. Stadell: What differential adjustment, the one prevailing before that or the one that was arbitrarily established on that date?

Mr. Wilkinson: No, a differential adjustment as of that [fol. 1640] date was established.

The Witness: It was published under the Blue Book which, as I say, was over our vigorous protest.

By Mr. Wilkinson:

Q. And in the same way the differential from Linton-Sullivan was 10 cents under Brazil-Clinton in that Blue Book publication to these points in Northern Illinois and Southern Wisconsin?

A. I couldn't say that, because that differential——

Q. Well, take a Southern Wisconsin point.

A. Well, I have three points here in Wisconsin that were established at 10 cents over Brazil-Clinton.

Q. Where there wasn't 10 cents to some of these points in Northern Illinois, the differential Linton-Sullivan over Brazil-Clinton was 5 cents, wasn't it?

A. There were instances of that.

Q. And the Princeton rate was 7 cents over Linton-Sullivan, generally speaking?

A. Yes, generally speaking.

Q. And Boonville was 3 cents over Princeton?

A. That is right.

Q. Now, under those differentials the rates from Indiana to these destinations in Wisconsin were increased enough so as to bring about that differential Southern Illinois in relation to Brazil-Clinton and the other Indiana rates in relation to Brazil-Clinton, isn't that true, and still main-[fol. 1641] tain as between Southern Illinois and the Wisconsin docks the relationship that had been prescribed in 89 ICC?

A. You speak of Brazil-Clinton versus Southern Illinois, and I can't recollect where they differentiated between Southern Illinois and Brazil-Clinton. I didn't know they were establishing a relationship between Southern Illinois and Brazil-Clinton. I thought it was between Springfield and Clinton.

Q. Well, whatever they were establishing, that was the result of the Blue Book?

A. That was the result, yes.

Q. And that was the result of all of the rates from Indiana, they were all increased?

A. They were put up on the same basis as Springfield.

Q. Yes, and the other Illinois rates were all increased to these points in Wisconsin that were involved in 89 ICC, the Lake Dock case, so as to maintain the then differentials as between Springfield and DuQuoin and Southern Illinois?

A. Those differentials were established in the coal cases in 1920 and was pending before——

Q. I say, they were maintained in the Blue Book Adjustment?

A. Yes.

Q. And that reflected the increases from Southern Illinois that had been made as a result of the Lake Dock Coal cases in 89 ICC?

A. Yes, and disrupted the differentials that were in effect [fol. 1642] prior to Ex Parte 74, in which the Commission told the carriers to reestablish them.

Mr. Stadell: Between what groups?

The Witness: Between all groups, Illinois, Indiana.

Mr. Stadell: It disrupted the ones that are in effect today?

The Witness: Yes, sir.

Mr. Wilkinson: And had been there since July 19, 1924?

The Witness: In Southern Wisconsin they had.

Exam. Trezise: I am not following your question there exactly, Mr. Wilkinson. Have you made your point now that there was any consistency at all between those groups that you mentioned to Northern Illinois, and that that consistency is still being maintained? Isn't the contrary true? Which are you trying to establish?

Mr. Wilkinson: Off the record.

Exam. Trieze: Yes, take this off the record.

(Discussion outside the record.)

Exam. Trezise: Proceed, Mr. Wilkinson.

By Mr. Wilkinson:

Q. Mr. Rozene, the adjustment into Wisconsin, as you and I have been discussing, was made as a result first of an increase from Southern Illinois, as a result of the decision in the Lake Dock Coal Cases, 89 ICC, and the rates from Southern Illinois were increased varying amounts so as to bring about a differential with Southern Illinois and [fol. 1643] the lake docks, is that right?

A. That is right.

Q. And those rates became effective in September, 1924?

A. That is right.

Q. Now, at that time the rates from the other Illinois groups, except the intermediates, and the rates from Indiana were not increased to those same destinations?

A. That is right.

Q. But later the rates from the other Illinois groups and from Indiana were increased to those destinations in Wisconsin to which the rates from Southern Illinois had been

increased? I am not referring to the amount, but they were increased?

A. They were increased, yes.

Q. And those increases were carried in the so-called Blue Book publications that became effective on July 19, 1925?

A. That is right.

Q. And those rates into Southern Wisconsin which became effective on July 19, 1925, carried with them rates that resulted in a difference between Brazil-Clinton and Southern Illinois of 30 cents per ton to all of those Southern Wisconsin destinations, or practically all of them?

A. As I recall it, Brazil-Clinton was put on the same basis as Springfield and Springfield was 30 cents under Southern Illinois.

Q. So there is a difference between the rates from South- [fol. 1644] ern Illinois and Brazil-Clinton of 30 cents per ton?

A. That is right.

Q. Now, that Blue Book publication also carried rates from both Southern Illinois and Springfield and the other Illinois groups and Indiana to this same general territory in Northern Illinois that is involved in this case, did it not?

A. Well, I am not so sure about that, Mr. Wilkinson, whether they took in the Northern Illinois points or not.

Q. You don't know——

A. I think if there was any change, say, for instance at Rockford, it would show in the carriers' exhibits.

Q. The history of the rates into this Northern Illinois territory is in here in a carriers' exhibit?

A. I think they have, to Rockford and Freeport.

Mr. Vesey: May I ask a question right there, Mr. Wilkinson?

Mr. Wilkinson: Surely.

By Mr. Vesey:

Q. Does that mean there were no intrastate rates, as far as you recollect, in the Blue Book?

A. As far as I recollect, I am not sure about that; I couldn't say without looking at it again. It has been a long time since I looked at that book.

Mr. Bather: May I ask a question there, Mr. Wilkinson?

Mr. Wilkinson: Surely.

By Mr. Bather:

Q. Mr. Rozene, isn't it a fact that the Blue Book rates [fol. 1645] were modified so that no increases were made in the proposed rates in the Blue Book, in so far as Illinois intrastate traffic was concerned?

A. That is why I hesitated to answer the question, because I don't know just how the Illinois intrastate rates were dealt with there.

Q. In other words, no change was made in the rates at that time from Southern Illinois or the other Illinois groups to Rockford?

A. As I stated, I couldn't answer that, because I am not clear on that. I would have to check it up. But I say the history of the rates is shown and the carriers will probably reveal whether they were or not.

By Mr. Wilkinson:

Q. By the way, talking about these groups and rates, in your Exhibit 20 you showed what purported to be the origin groups in Illinois and Indiana and West Kentucky?

A. Yes, sir.

Q. Now, in that map you failed to show a Bedford group in Indiana, did you not?

A. I have shown it, but I haven't identified it. It is shown there but I haven't identified it.

Q. Well, you haven't identified it. Is that the yellow spot just west of——

A. Between Bedford and Elnora, yes.

Q. What road is that on?

[fol. 1646] A. Chicago, Milwaukee, St. Paul & Pacific.

Q. That is the only road that serves mines there?

A. Yes, sir.

Q. Did you hear Mr. Kuhls' evidence regarding rates from the mines in that territory?

A. Yes. I probably didn't hear it all. I read it though, that they were not very material.

Q. Well, you heard him say there were no mines there shipping coal now, didn't you?

A. Yes.

Q. And that the only mines that had ever been there were some wagon mines that brought coal to a siding and shipped from there?

A. That is right.

Q. But you show five origin points in Bedford, don't you?

A. That is right.

Q. Now, if you had omitted Bedford from your computations in your exhibit No. 29, would not the result have been to have had a slightly higher average rate and a slightly lower average haul than you do show in your Exhibit No. 29?

A. It depends upon what you mean by "slightly", one-tenth of a mill or something like that.

Q. It might be only a tenth of a mill or something like that, but slightly higher for the rate and slightly lower for the mileage?

[fol. 1647] A. I don't think it would make enough difference to even——

Q. I am not asking the amount. I am asking if that is not the fact.

A. I don't know. I don't think it would make much difference.

Q. Now, further in respect to your Exhibit No. 29, these outlines around the yellow spots are not exact, are they, Mr. Rozene?

A. What do you mean by "exact"?

Q. Well, for example, your Southern Illinois outline, that is a straight line across the bottom. Now, isn't that arrived at by merely taking a line that would run through Carbondale through one that would run through this town of, some kind of a Junction, down there at the right-hand side?

A. Well, the line runs that way. We tried to avoid cutting off any mines if they are south of that line. I think all the mines are north of that line.

Q. What I am trying to get at is the idea of your map, that you have taken the points at which mines are located and then drawn the lines just so they would include those mines?

A. That is right, the tariff origin points.

Q. I am trying to find out how, for example, on the line of the Illinois Central you knew where to draw the line that would cut through the Illinois Central just south of this town of Bellerive, I think it is. Do you see what I mean?

A. It would be north of Bellerive, wouldn't it? There are [fol. 1648] probably no mines on that line south of Bellerive. I have never been able to find out or to find any other mine. But we cut across there to make a grouping so it would appear on the map properly.

Q. And that is the same theory on which all of these demarcations are made, just so it would roughly enclose all of the mines from which you found rates published in the tariff?

A. That is right.

Exam. Trezise: That isn't "roughly", is it?

The Witness: It isn't "roughly." It shows the limits of the group generally.

Exam. Trezise: If you had drawn a line just to include each mine that is in that group and border it close with a line, it would be a zigzag line instead of a straight line, but you have drawn a straight line, have you?

The Witness: Yes, sir.

Mr. Wilkinson: That is what I am getting at, whether this was supposed to represent mines right up to the line of the Illinois Central or whether it was drawn just, for example, at McLeansboro, and some other town up here in the corner?

Exam. Trezise: Well, if it were drawn properly the line there might drop down on the Illinois Central to a considerable extent.

The Witness: That is right, yes, sir.

By Mr. Wilkinson:

Q. Now, why did you not include these Bedford mines in [fol. 1649] the Linton-Sullivan group of Indiana instead of setting it out as a separate group?

A. Well, I did that in one case and we were criticized by the Indiana people, so I separated it this time.

Q. Otherwise you would have put it in Linton-Sullivan?

A. No, I wouldn't have put it in there at all. I leave it separate, the way it is.

Q. I mean if you hadn't been criticized.

A. Well, I assume they were on the Linton basis in the other proceeding, and here I found they take the same rates and probably should be separated. If they take the same rates they should be separated.

Exam. Trezise: You say, if they do?

The Witness: They do take the same rates on certain points on the Chicago, Milwaukee, St. Paul & Pacific.

By Mr. Wilkinson:

Q. And they take higher rates to other points on the Milwaukee Railroad?

A. They take higher rates to where?

Q. To some of the other points on the Milwaukee.

Exam. Trezise: Higher rates than Linton?

Mr. Wilkinson: Higher rates than Linton.

The Witness: No, I think they take the same rate as Linton in all cases to destinations on the St. Paul.

By Mr. Wilkinson:

Q. Now, you spoke in your direct examination of the reduction in the tonnage which was shipped from Southern [fol. 1650] Illinois in 1941 as compared to the shipments from Southern Illinois in 1923 to the destinations in the Northwest, Minnesota, South Dakota, Michigan, Iowa, Wisconsin, and so on. Did you also include in your computations of reductions from Southern Illinois, the movement from Southern Illinois to Northern Illinois, the territory here involved?

A. I don't quite get you. We haven't any separate figures showing what the tonnage is to Illinois.

Q. So that is why you didn't refer to this destination territory in Northern Illinois when you were discussing the loss of tonnage from the Southern Illinois mines?

A. No, we couldn't refer to Northern Illinois because there are no figures published that I know of to the specific territory.

Q. Do you attribute the loss of the tonnage from Southern Illinois, which you have referred to at page 29 of your prepared statement, to the freight rate adjustment?

A. Not wholly, no. There are other conditions probably that have affected it besides the freight rate adjustment.

Q. Do you know whether or not there has been a diminution of the tonnage from the Indiana groups to this territory that you have described at page 29 of your prepared statement during this same period, 1923 as compared to 1941?

A. I haven't checked it.

Q. You mean you haven't checked it recently or you have never checked it?

[fol. 1651] A. Recently.

Q. And you have no recollection about it?

A. I couldn't tell you anything about it unless I had the figures before me, Mr. Wilkinson.

Q. Now, what do you mean in your statement at that page 29 where you said, "This decline has been due to the displacement of coal from Southern Illinois mines by other mines, by coal moving by truck, and by substitute fuels, such as natural gas, fuel oil, et cetera." Do you know of your own knowledge of any Southern Illinois coal during this period being displaced by the coal that moved into that territory by truck?

A. I don't of my own knowledge, but I know just from what I have heard in meetings with our member companies.

Q. You just heard it in meetings?

A. Yes, sir.

Q. Now, do you know whether or not Southern Illinois has ever gotten any new customers in any of this territory where it displaced some other coal?

A. No, I don't.

Q. You never heard of that happening?

A. No, I haven't.

Q. Do you know whether or not it is generally true that less coal is used, or was used in 1941 as compared to 1943, to generate the same amount of steam?

A. I have heard so, yes.

[fol. 1652] Q. Well, that is quite generally admitted, isn't it?

A. Yes.

Q. Do you think that that factor might have had some effect on reducing these shipments from Southern Illinois into this territory?

A. It probably has, one of the factors.

Q. Well, you didn't mention that in your factors here. Now, isn't it true that the natural gas has been more of a factor in Nebraska, Iowa and maybe Minnesota and the Dakotas than it has in Northern Illinois or Southern Wisconsin?

A. I couldn't say.

Q. You don't know where the pipe lines go?

A. I am answering your question. I know from a general standpoint, but answering your question, I don't know.

Q. Now, you made the statement that the quantity of coal shipped from Southern Illinois mines to destinations in Indiana decreased about a million and a half tons in 1941 as

compared to 1923. Was that coal displaced by other coal, do you know?

A. I couldn't say what displaced it. Other coals evidently displaced it.

Q. Do you know as to what part of Indiana that million and a half tons was formerly shipped?

A. No, I don't.

Q. You don't know that it was shipped to the steel mills at Gary and Indiana Harbor and there?

[fol. 1653] A. I don't know that, no, sir.

Q. You don't know that it was displaced, along with the No. 4 coal of Indiana, by Eastern Kentucky coal and coke, do you?

A. I don't know that, no.

Q. Now, you speak about 101 mines having been closed down and abandoned in Southern Illinois since 1923. Are they any part of the mines which in previou hearings you have pointed out as being unable to operate because of the lack of markets for Illinois coal?

A. Same mines, yes, sir.

Q. Now, some of those mines that you have talked about, owned by members of your association, as being unable to operate because of lack of markets, are not operating today, are they?

A. Not that I know of.

Q. You don't know that some of the mines that you spoke of, I think in one of the early hearings in the Wisconsin cases, that you testified were not operating because there was no market, are still not operating?

A. I don't know of any new mines that have opened up in Southern Illinois in the last couple of years.

Q. No, but you know of a number of mines that have not operated for five or six years and are still not operating, don't you?

A. Yes, sir.

Q. And yet there is no lack of market today for the coals produced in Southern Illinois, is there? You could sell [fol. 1654] more coal than you are now producing, couldn't you?

A. I understand business now is very good.

Q. What are the latest figures you have on the operations of the Southern Illinois mines? You show here the number of days operated in 1938, 1939 and 1940. Is that the latest figures that are available on that subject?

A. No, they are not the latest, but that is the latest I figured out. We bring this up each year. But that is the latest year we have.

Q. Where do you get those figures from?

A. From the Illinois Coal Reports.

Q. And they haven't got out the reports for 1941 or 1942 yet?

A. I didn't say they were not out. I said we haven't had them to work them out yet.

Q. But they are available?

A. Well, 1941 I think is out.

Q. Before the hearing in this case, Mr. Rozene, you sent out a copy of the exhibits that you intended to introduce, certain mileage and rate figures. I understood you to say early in your testimony that there were errors in that exhibit, so that you did not use it, is that correct?

A. I didn't say there were errors. We didn't have the Belleville District mines in there, and we wanted them all in together, and when we found we had them, we reworked the exhibit. There might have been some errors in there. [fol. 1655] We probably discovered them. I don't know just what they were, but they were not material.

Q. Now, in that exhibit you sent out, you showed the figures from all of the mines via the average of the short tariff routes, is that correct?

A. That is right.

Mr. Morgan: Was that exhibit ever introduced in evidence?

Mr. Wilkinson: No.

By Mr. Morgan:

Q. Whereas in the Exhibits that you have introduced in evidence, you do not show any of your computations of rates and distances via short tariff routes, but rely solely on the carriers?

A. That is correct.

Q. Was that merely to avoid duplicating?

A. That is all, yes, sir.

Exam. Trezise: Now, that is in the record now, Mr. Morgan, those distances in the carriers' exhibits are the short tariff routes.

Mr. Morgan: May I be off the record?

Exam. Trezise: Off the record.

(Discussion outside the record.)

Exam. Trezise: Proceed.

By Mr. Wilkinson:

Q. Now, do you think, Mr. Rozene, that because Southern Illinois lost this million and a half tons of coal which it formerly shipped to destinations in Indiana, that it should [fol. 1656] be given some kind of a preference in the rates to these destinations in Northern Illinois so that it can recoup that loss?

A. We are not asking for any preference, Mr. Wilkinson.

Q. Then what is the significance in your judgment, Mr. Rozene, of the fact that you lost a million and a half tons of coal between 1923 and 1941 or 1940, that you had formerly shipped to destinations in Indiana?

A. Well, we showed the losses to these other points to illustrate that we have been pushed out of the markets in these other states, and to show how important this Northern Illinois market is to us.

Q. You didn't mean by showing this that you thought the Commission should give any consideration to that in fixing your rates to these Northern Illinois points, did you?

A. We are not asking the Commission to do anything from Illinois more than they would do from Indiana. We are ready to go along on a reasonable level from all the fields. But we don't expect our rates to be so much higher that it shuts us out and lets somebody else in with a lower rate.

Q. Do you have any information from any source regarding the movement of coal from Southern Illinois to the destination territory involved in this proceeding, as to whether it has grown or whether you have held your own in the market relatively with the other groups that ship there, or [fol. 1657] whether it has diminished?

Exam. Trezise: If he doesn't know what the movement is, how could he know that, Mr. Wilkinson?

Mr. Wilkinson: Well, he may not know the exact movement. I asked him if he has any information.

The Witness: I would have to get the tonnage figures out and study them.

Mr. Wilkinson: That is all.

Exam. Trezise: Very well. We will take a short recess.

(Recess taken.)

Exam. Trezise: Mr. Wilkinson, you had another question you wanted to ask?

Mr. Wilkinson: Yes, I wanted to ask one or two questions.

By Mr. Wilkinson:

Q. Mr. Rozene, in your Exhibit No. 29 you show that the average mills per ton from the Fulton County mines to all destinations in the affected territory is 10.2 mills and from Southern Illinois you show that the average earnings are 5.8 mills. Is that correct?

A. Yes, sir.

Q. Now, I understood in answer to a question asked of you by one of other counsel that you thought that was proper because of the fact that ton mile earnings should properly decrease as length of hauls increases.

A. I don't remember testifying to that.

Q. Didn't you testify to that?

[fol. 1658] A. No.

Q. Well, do you think that that is a proper spread as between Fulton County, on the one hand, of 10.2 mills per ton mile earning and Southern Illinois, on the other, with 5.8 mills?

A. I can't see anything wrong with it.

Q. And you think that shows an equality of level of rates?

A. Well, that would be pretty difficult to answer, Mr. Wilkinson, for this reason: There are so many different rates for varying distances here that you could probably find any kind of a comparison you would be looking for.

Q. Well, would the fact that the haul from Fulton County as an average of 159 miles and a haul from Southern Illinois 354 miles——

Mr. Bather: To where?

By Mr. Wilkinson (Continuing):

Q. —to all of the twelve suspended points, have any effect upon the relation of the mills per ton mile earnings from the two groups to these twelve destinations?

A. It is obvious that it would.

Q. And because the haul from Southern Illinois is so much longer than from Fulton County, is it proper that the ton mile earnings should be less from Southern Illinois?

A. That is usually the way rates prove up.

Q. Now, I call your attention to the fact that you show that the average distance from all of Illinois to these twelve [fol. 1659] suspended points is 270 miles, and in that same exhibit you show that the average distance from the Indiana groups to all of the suspended points is 313 miles, a difference of 43 miles. Now, do you think that a difference there, taking the entire two states, should have the effect of having slightly less mills per ton per mile earnings from Indiana than from Illinois?

A. You have got a drop there of 3.7 mills per ton per mile for 43 miles. I think that is too great.

Q. Well, for that difference there, considering we are looking at both states as a whole, what do you think a difference of 43 miles should represent in the difference in the mills per ton mile earnings—.2 of a mill or .5 or a mill or what?

A. I couldn't answer that directly because before I would answer the question I would want to study some of the scales and see how the scales drop.

Q. Well, you made a pretty thorough study of the H. & H. scale, didn't you?

A. I haven't looked at it.

Q. I thought you were going to look that up and testify about it today.

A. I can't do it today, no, sir.

Q. Well, just looking at your rates from the various groups in Illinois to these destinations, for example, DuQuoin and Southern Illinois, with a differential of one mill for a difference of 54 miles, or Bellesville and Southern [fol. 1660] Illinois, with a differential of 5 mills for 27 miles, based on that study, would you have an opinion?

A. No, sir.

Q. But you think that there should be some slight difference in the earnings?

A. Yes, sir.

Q. And that the longer haul should have slightly lower mills per ton mile than the shorter haul, using the average hauls for the two states to a group of destinations?

A. Well, that is generally the theory of rate making.

Q. But you wouldn't want to give an opinion as to what that difference is?

A. Because we have so many of them here, why, I could sit here for a week and pick out thousands of comparisons.

Q. Following that a little further, would you say that if it developed that the difference in mills per ton mile earnings from Indiana to all of these twelve representative points was only, say two or three-tenths of one per cent less than all of Illinois to the same points, that you would show that the Indiana rates were on a lower level than the Illinois rates, considering the difference in distance?

A. You mean one or two-tenths per cent?

Q. Yes, just one or two or three or four-tenths per cent.

A. I don't think we would go down that fine, to half a mill or something like that.

[fol. 1661] Mr. Wilkinson: All right, that is all.

Exam. Trezise: Do we have further questions of Mr. Rozene?

By Mr. Cardy:

Q. Just one question, Mr. Rozene. As I understand your exhibit here, or three or four of your exhibits, they attempt to compare the level of the Illinois rates which are increased with the level of the Indiana interstate and Western Kentucky rates. In other words, a comparison of the levels of the state versus the interstate rates, is that true?

A. Yes, sir.

Q. And by your method of computation, regardless of how the computation is made, it indicates that the rates in Illinois are on a higher level, is that true?

A. Yes, sir.

Q. Now, the carriers in their Exhibit 12, as I remember it, they compared the state rates to 12 destinations, with about twelve interstate points, and by their method of computation it shows directly opposite—that the Illinois intrastate rates are on a lower level than the interstate. Do you remember that?

A. Well, I have an exhibit showing the level on their figures.

Q. That is what that indicates, isn't it?

A. No. I would have to take another look at it.

Q. Well, that was my impression, that that was the purpose of the exhibit and that was their showing.

[fol. 1662] Mr. Stadell: Are you talking about railroads' exhibit No. 11?

Mr. Cardy: Railroads' Exhibit No. 11.

The Witness: Well, I don't believe Exhibit No. 11 brings it down to a final average.

By Mr. Cardy:

Q. In other words, Mr. Rozene, I don't know whether you are familiar with Exhibit No. 11, but that indicates from the comparisons the carriers made that the Illinois intrastate rates are on a lower level than the interstate, to twelve points, and they compared point to point rates. Now, as I understand it, you have taken all of the rates that were increased in this proceeding, some 350, and by your method of computation you show exactly opposites. Now, have you any thoughts or expressions? I would like to have them from you, because I think you probably are more familiar with this situation than a lot of us, as to which method is the proper and the best method to test the level of the Illinois intrastate rates which are supposed to be increased, with the level of the interstate rates to the same destinations. If you have any thought on that, I would like to have it. If you haven't, we will drop it.

A. Just as I expressed it in my Exhibits 28 and 29, that is the proper method, I think.

Mr. McElroy: In other words, is your method better or is the carriers' method better in testing the level of the [fol. 1663] Illinois intrastate rates?

The Witness: Well, I think my method is the best of the two.

Mr. McElroy: Why?

The Witness: For the reasons I have explained. I have gone into more detail on it.

Mr. McElroy: You include more points than the carriers have included in their showing?

The Witness: No. I have tried to take all the points in the state.

Mr. McElroy: Then you include more points in your showing than the carriers have included in their showing, is that correct?

The Witness: No, I have used the same points.

Exam. Trezise: Let us get the difference. The difference is that the carriers figured distances over the short tariff routes and you figured them over the shortest tariff routes. Now, beyond that, you took the same origins and you took the same destinations, didn't you?

The Witness: Yes, sir, identically.

Exam. Trezise: Then what else is different? Nothing that you know of?

The Witness: Nothing that I know of, only the method that is used.

By Mr. Cardy:

Q. Just one other point. Didn't you take all of the rates [fol. 1664] that are involved in this proceeding, to be increased, and determined your ton mile earnings on all of the rates, not only twelve rates?

A. I took all of the rates. I attempted to.

Mr. Zoll: Mr. Examiner, I just wanted to clarify for the record the fact that in one of Mr. Cardy's questions he said that there were some 350 points to which the rates had been increased in the carriers' suspended tariffs, and as we will show before the hearing closes, that is about three times as many as actually were increased. I think the number is around the hundred's.

Mr. Cardy: Well, I will make my question to read the actual number.

The Witness: I want to add one further thing, that the carriers' Exhibit No. 11 compares the rates with the Holmes and Hallowell scale, which I have not used in my exhibits.

By Mr. Bathor:

Q. Mr. Rozene, with reference to Mr. Cardy's examination referring to your exhibit No. 29, page 16, does that show the situation in so far as the state and interstate rates are concerned?

A. Yes, sir, it does.

Q. And that is based on the other information contained in the exhibit?

A. Yes, sir.

Exam. Trezise: Do we have some further questions of [fol. 1665] Mr. Rozene?

Mr. Vesey: Yes, I have a few.
Exam. Trezise: Mr. Vesey.

By Mr. Vesey:

Q. In making your study of levels, Mr. Rozene, did you make a study of the level of rates from each of the origin groups in Illinois to both the so-called compared territory, that is, in Southern Wisconsin, and then to the suspended territory in Northern Illinois?

A. Yes, sir.

Q. And did you do the same for the Indiana Groups?

A. Identically.

Q. Now, in answer to Mr. Wilkinson's question along toward the end of his cross examination, I believe you said that all that you wanted was a reasonable level to prevail from all groups, is that right?

A. That is correct.

Q. Now, am I to take it from that, that what Southern Illinois is really asking is that the same relationship be maintained between the level of rates prevailing in the compared territory as against the suspended territory for each of the groups involved, that is, the origin groups involved in this proceeding?

A. All we ask is to be on the same level as the rates from Indiana.

Q. On the same level as the rates from Indiana?

[fol. 1666] A. Yes.

Q. Well, is all that you are asking for is, for example, taking Springfield as against Brazil-Clinton, let us say, that the same relationship be maintained for Springfield, that is, between your level in your compared territory as compared against your level in your suspended territory, as is maintained for Brazil-Clinton to the compared territory as against suspended?

A. Provided the distances are practically the same.

Q. Provided the distances are practically the same?

A. Yes.

Q. In other words, you would have the same relationships and levels compared as against suspended for both groups?

A. Yes, sir.

Exam. Trezise: Where the distances are the same.

Mr. Vesey: I say, where the distances are the same.

Exam. Trezise: Where they are the same, you think the rates should be the same?

The Witness: Yes.

By Mr. Vesey:

Q. Then, where you, as I take it, would scale down, that is, increase the distances, one group against the other, would you have a variation in the level?

A. Well, if it happened that Princeton-Ayrshire was on the same level as Southern Illinois, we want the same level and the same rate. The mileages are identical. They are practically the same.

[fol. 1667] Q. Now, in making your study of the levels you found, did you not, for example, that the variation in the levels for Brazil-Clinton in the compared territory as against the suspended territory was a wider variation than the variation from Southern Illinois in its compared territory as against the suspended, did you not?

A. Between Springfield——

Q. No, between Brazil-Clinton, on the one hand, comparing the two levels, and comparing the two levels of Southern Illinois, you found a greater disparity in the case of Brazil-Clinton?

A. Yes.

Exam. Trezise: To Northern Illinois?

Mr. Vesey: That is right.

The Witness: Yes.

By Mr. Vesey:

Q. That coincides, does it, with your theory of rate-making, namely, that speaking of differentials or differences, that the differential or difference should increase as the distance decreases, or stated conversely, that the differential or difference should decrease as the distance increases, is that right?

A. That is right, yes.

Q. And that is fundamental with you in the making of rates, is it?

A. Well, that is what the Commission has done.

Q. Well, take your own opinion. I don't care about the [fol. 1668] Commission. I mean, as you look at it, it would be a proper rate pattern that would be fundamental, would it not?

A. Pardon me, as I understand you, as the distance increases the differential should decrease?

Q. Yes, or stated conversely, take Southern Illinois as against Brazil-Clinton, for example, which you said was right there, where your distance decreases your differential increases?

A. No, I don't think that would be quite proper. I think if you are going to set a certain differential you have got to take a large destination group and apply the differential to that group.

Q. You are not complaining against the Brazil-Clinton, the relationship in levels, are you, as between its level of rates to the suspended territory as compared to the compared territory, in so far as it has a greater width in that differential than you have in Southern Illinois; you are not complaining about that, are you?

A. We are not complaining in this case. We can't complain about the differentials to the compared territory.

Q. I say, in your testimony here or your exhibits, you are not making any point of that, are you?

A. No.

Q. Now, in following through on that study which you said you made of these rate level relationships, didn't you find that looking at Southern Illinois now, as against [fol. 1669] Brazil-Clinton, on the one hand, and Southern Illinois as against Fulton-Peoria, on the other, that they were just in converse relationship, namely, where Brazil-Clinton being the closer group compared with Southern Illinois, the rate differential had widened, and when you got to Fulton-Peoria, the closest point, so far as Illinois is concerned, that is, that the rate differential decreased?

A. No, I didn't find that.

Q. I mean so far as the levels are concerned.

A. I would have to check through here to check those.

Q. You don't recall that?

A. I am trying to.

Q. Well, just leave that question go for the moment. Let me ask you this way: Do you know of any reason why Fulton-Peoria's rate level relationship, suspended territory as against compared, should be any different than the rate level relationship between Southern Illinois, suspended as against compared?

Mr. Stadell: You mean as measured by some scale?

Mr. Vesey: Just measured any way you want to. I mean talking about the rate level relationships.

The Witness: Well, just this one question, do you mean the present differentials?

Mr. Vesey: I am just talking about, not present—theoretical; Southern Illinois is static; what should Fulton-Peoria be, for example? Now, assuming, Mr. Rozene, that the level [fol. 1670] of Southern Illinois in the compared territory as related to the Southern Illinois level in the suspended differ but ten percentage points on a scale used, do you know of any reason why Fulton-Peoria's rate level relationship, compared as against suspended, should be greater than ten percentage points?

The Witness: Well, I am not going to make a direct answer to that, for this reason, that it may be the differential into the compared territory isn't right.

By Mr. Vesey:

Q. I think if the answer is "Yes", then you do know of no reason, is that what you mean?

A. As I understood the question, you want to know whether the differential in this suspended territory shouldn't be the same as in the compared territory?

Q. No, I did not talk about what the levels should be. I am saying the relationship between levels, do you know of any reason why they should be different?

A. No, there shouldn't be any variation.

Q. There shouldn't be any variation, should there?

A. No.

Q. And if there was any variation, it would be a wider differential relationship, would it not?

A. I wouldn't say it would.

Q. For the closest origin?

A. Not necessarily.

Q. Just wait until I finish the question—as is the case in [fol. 1671] your Brazil-Clinton relationship, compared against suspended, when measured against Southern Illinois, compared against suspended?

A. As I said, maybe the compared territory isn't right, and we don't think it is right. So I wouldn't hook it up with the compared territory.

Q. Do you know of any reason why Fulton-Peoria, for example, in its relationship with Southern Illinois, and by

that I mean its relationship of rates, in the compared territory as against the suspended, should not be accorded an equal status, let us say, with Brazil-Clinton, which likewise is a closer group to the suspended and compared territory than is Southern Illinois?

A. Well, I will tell you. I will answer that question in this way. I think that probably we should take the rate from Fulton-Peoria and let the other rates fall in according to their distance. Then they would be on a proper level, each group according to their mileage.

Mr. Stadell: You mean use Fulton-Peoria as a base group from the whole midwestern field, Indiana and Illinois?

The Witness: Yes.

By Mr. Vesey:

Q. In making that statement, is that your way of recognizing an imperfection in the Fulton-Peoria relationship of rates?

A. No, sir. I haven't made that study to determine just what I think Fulton County should be under Southern [fol. 1672] Illinois or vice versa, Southern Illinois over Fulton County.

Q. You mean you didn't find that just obvious by looking at the rate relationship?

A. No, I did not find it obvious. I would have to check the mileage. We couldn't set a differential at one point.

Q. I believe you answered a question of Mr. Biaett's in which you said you would be glad to make a gradation in the Holmes and Hallowell scale.

A. We are going to do that, I understand.

Exam. Trezise: He didn't say he would be glad to do it. I think he said he would do it.

By Mr. Vesey:

Q. In a recent case were you not a witness in which you complained of the rate levels from West Kentucky as against Southern Illinois on coal moving in its northern movement?

A. Yes, sir.

Mr. Biaett: What was the destination in that case?

The Witness: Northern territory, Iowa, Wisconsin, Minnesota, South Dakota.

By Mr. Vesey:

Q. In other words, in its northbound movement, so to speak, from the two fields?

A. Yes.

Q. Now, will you turn to your page 15 of Exhibit 23.

Mr. Morgan: I would like to raise an objection to the question there, unless it is limited to territories involved [fol. 1673] in this case.

Exam. Trezise: Is it limited to the comparative territory?

Mr. Vesey: Yes.

Mr. Stadell: What page was that?

Mr. Vesey: Page 15 of Exhibit 23.

The Witness: Yes, sir.

By Mr. Vesey:

Q. You will note in there, take, for example, under your 23922 scale, you show on line 13 that Southern Illinois' level is 91 per cent of that scale?

A. Yes, sir.

Q. And West Kentucky is 98 per cent of that scale?

A. Yes, sir. I noticed that.

Q. Now, on the basis of those two figures, would it not appear that West Kentucky had a higher level of rates to Beloit, Wisconsin, for example, than Southern Illinois?

A. It would appear so, yes.

Q. But, as a matter of fact, that is not true, according to your contention in the West Kentucky case, is that right?

A. That is right.

Q. Does that, therefore, mean the scale is wrong or the compilation is wrong?

A. It means there are other factors besides mileage taken into consideration in setting the Kentucky differential.

Q. It means that there are other factors besides the scale? [fols. 1674-1677] A. Besides mileage alone.

Q. Isn't it true, Mr. Rozene, in looking at the scale in and of itself, that your 23922 scale is a scale that grades off rather sharply, let us say, as you pass distances of 150 miles?

A. Well, I would have to take a good look at the scale and compare it to other scales to see how much, if any, it drops off.

* * * * * * *

[fol. 1678] By Exam. Trezise:

Q. To what destinations do you think that the differential, Southern Illinois over Fulton-Peoria, should be less than 70 cents? You said you thought it should be less than 70 cents. To what destinations?

A. Wisconsin, for instance. As I say, I haven't made a complete study of it, and I am not prepared to answer that, because we are going to answer that in the next proceeding, as I understand, try to, or show what the situation is.

Mr. McElroy: In any event, are any of those infirmities in the differential with respect to Southern Illinois, on the one hand, and Fulton County, on the other, to the intrastate destinations present in the Illinois intrastate adjustment or is the differential constant?

Mr. Cardy: Could I have that question read?

(Question read.)

The Witness: It varies between 50 and 60 cents.

Mr. Cardy: At different points?

The Witness: In some places it is 50 cents; in some places it is 60 cents.

By Mr. Vesey:

Q. To this suspended territory, there are a lot of destinations in Northern Illinois, are there not, Mr. Rozene, where——

A. Just from the figures I have before me.

Q. Well, you don't leave the impression in this record that the differential between Fulton County and Southern [fol. 1679] Illinois is 50 and 60 cents in the Northern part of the state? There are many points up there, are there not, where the differential is 70 cents, take West of Rockford and west of Freeport, for example?

A. I couldn't give you that as to Rockford; only, in so far as my Exhibit 29, it varies 50 to 60 cents. Now, what it is at other points, other than shown in my Exhibit 29, I couldn't say unless I checked them.

Q. Mr. Rozene, right in that connection, just to complete the record, take the two compared points that are in this proceeding, that are in Illinois, and just state what the differential is, Southern Illinois over Fulton-Peoria, at those two compared points, which in this case is Savanna,

Illinois, and Rock Island, Illinois? What is the differential there?

A. Well, it is 75 cents at Savanna.

Q. And 95 cents at Rock Island, is it not?

A. Yes.

Q. Your answer was yes?

A. Yes.

Q. And those are two compared points in this proceeding?

A. Yes.

By Exam. Trezise:

Q. Well, it is a fact though that the present differential, Southern Illinois over Fulton-Peoria, to these destinations that are illustrated here are generally less than 70 cents, isn't that true?

[fol. 1680] A. Yes.

Mr. Vesey: You mean to the suspended points?

The Witness: To the suspended points. They are less than 50 cents—some of them are 60 cents, that is true, but some of them are much lower than that, 35 cents, for example. Whereas, as soon as you cross the line there, the differential begins to rise, Southern Illinois over Fulton-Peoria.

Mr. Vesey: Which as I have tried to establish by my cross examination of every witness on this stand is diametrically opposed to your fundamentals in the making of rates. We assume some day logic will creep into these rates.

Exam. Trezise: So that one of the two, you are maintaining, Mr. Vesey, must be wrong. They can't both be right.

Mr. Vesey: Exactly.

Exam. Trezise: Do we have some further questions?

By Mr. Wilkinson:

Q. May I try to get this differential straightened out. Now, take the town of Sterling, Mr. Rozene, that appears on page 6 of your Exhibit No. 29. You show a rate from Peoria of $1.25 and a rate from Southern Illinois of $2.00, a differential of 75 cents.

A. That is right.

Q. You show two rates from Fulton County, one of $1.23, a difference of 76 cents, and one of $1.75, a difference of 25 cents. Now, when you talk about differentials as against

the Fulton-Peoria and Southern Illinois, which of those [fol. 1681] differentials at Sterling are you talking about?

A. I didn't mention Sterling at all. I am taking the general, where you have one rate from Fulton County and one rate from Southern Illinois.

Q. Well now, take Sterling, as between Fulton County and Southern Illinois, what is the differential there?

A. Just as I stated, there are two differentials from Fulton County. One applies from CB&Q mines, I believe, and the higher one applies from the Toledo, Peoria and Western mines.

Exam. Trezise: What the Examiner had in mind when he asked his questions were the designations of Byron, Davis, Dixon, Freeport, Ladd, Marengo, Rochelle, Rockford, St. Charles, Sycamore, and Wasco. Any further questions?

By Mr. Wilkinson:

Q. There was one other thing. I understood you to say in reply to a question from Mr. Vesey that you thought that the rates from Brazil-Clinton and from Springfield should be the same if the distance to the destination was substantially the same. Did you mean that, Mr. Rozene?

A. I can't see anything wrong with that if both have got equal distances. I can't see how one rate can be any higher than the other or why it should be any higher.

Q. Then you are not advocating at Rockford, where you show a distance from Springfield to Rockford of 257 miles, and the distance from Brazil-Clinton to Rockford via roads other than the Milwaukee as 253 miles, that the Brazil- [fol. 1682] Clinton rate should be $2.12 under the suspended rates and the Springfield rate $1.95.

A. I haven't advocated that.

Q. You don't advocate that?

A. I haven't advocated that. How could I advocate that!

Mr. Wilkinson: I just wanted to find out.

The Witness: We are fair about this. But in the same breath, you have Princeton-Ayrshire and Southern Illinois on equal distances and they should all have the same rate mile for mile. That is our principle throughout the exhibit.

By Mr. Wilkinson:

Q. And you are not advocating then the maintenance of the present relationship in the rates to these northern Illinois points as between the Indiana groups, on the one hand, and the Illinois group, on the other?

A. The present relationships?

Q. Yes, those existing under the present rates.

A. Well, I think I made my position very clear when I stated we didn't expect higher rates for lower distances, and we don't expect Indiana to have them, giving due consideration to the circuity we have in our routes.

Q. But to get it clear, you are not advocating a maintenance of the relationship that exists under the present rates from Illinois and the present rates from Indiana to these points in Northern Illinois that are here involved?

A. Well, I would have to make a thorough study here to [fol. 1683] find where the differences would be so far out there wouldn't be any rhyme or reason for maintaining them on the same basis.

Q. And I further understand that you are not supporting the carriers in their proposals where they would have Brazil-Clinton pay $2.12 for a 253 mile haul to Rockford, where Springfield operators, whom you also represent, would pay but a rate of $1.95?

Mr. Stadell: Now, just a minute. He hasn't testified in support of any of these rates from Indiana.

Mr. Wilkinson: Or from Illinois.

Mr. Stadell: He has testified in opposition to the increases from Illinois. I think his position on that is very clear.

Mr. Wilkinson: Merely in opposition to the increases from Illinois?

Mr. Stadell: In opposition to the increases from Illinois.

Mr. Wilkinson: And he has not introduced or he is not interested in the rates from Indiana?

Mr. Stadell: Very much so. The record is very clear on that.

Mr. Wilkinson: What I am trying to get at is the purpose of the witness' evidence. You are not advocating what they want to do with the rates from Indiana?

The Witness: I am here objecting to the increases being made in the rates from the State of Illinois.

[fol. 1684] Mr. Wilkinson: That is all.

Exam. Trezise: Are we through?

Mr. Boden: I would like to ask a few questions.

Exam. Trezise: Mr. Boden.

By Mr. Boden:

Q. Do I understand from your direct testimony, Mr. Rozene, that you consider the Wisconsin level of rates prescribed by the Wisconsin Commission as too low?

A. Yes, compared with the rates from Illinois.

Q. Have you compared what the rate would be from Southern Illinois under that scale, as what it would be say from Milwaukee under that scale to Beloit, which is involved in this case?

A. You mean from point to point? No, I haven't.

Q. Take Southern Illinois to Beloit, as compared with Milwaukee to Beloit, using the Wisconsin scale as a comparison.

A. No. I have compared them figuring the distances on the same basis from Southern Illinois as I have from the dock and used the 23922 scale as a yardstock.

Q. But you haven't used the Wisconsin scale?

A. No.

Q. Now, you had some testimony in here as to some six, eight and nine million tons of coal entering the lake docks of Wisconsin. Is it your idea that that moves out into Wisconsin to a great extent, particularly Southern Wisconsin?

A. Well, there is no doubt some is consumed right at the docks.

[fol. 1685] Q. You don't know the volume that moves from say the Milwaukee docks to points in Southern Wisconsin, that might be of interest to the Illinois shippers?

A. No, I don't know what amount moves in there.

Mr. Boden: That is all I have.

Exam. Trezise: Do we have any further questions?

Mr. Biaett: I have one.

Exam. Trezise: Mr. Biaett.

By Mr. Biaett:

Q. Mr. Rozene, to short haul points from the Fulton-Peoria group in Northern Illinois, say up to 160 or 170

miles, in your opinion, should there be a uniform difference in the rates between Fulton-Peoria and Southern Illinois to such points?

Mr. Cardy: I will object to that. The question of differentials shouldn't be brought into this.

Mr. Biaett: I am not asking about differentials. Well, I will ask him, should there be a differential relationship? That is the answer I want.

Mr. Cardy: Well, I will object.

Mr. McElroy: Is that addressed to the interstate adjustment up to 150 miles or the intrastate?

Mr. Cardy: I don't see how the differential adjustment comes in an I. & S. proceeding.

Mr. McElroy: I don't think so, but we have everything else in here. So I don't think we will be much more confused. [fols. 1686-1688] Mr. Cardy: All right, I will withdraw the objection.

The Witness: Well, your question is much too general to answer, Mr. Biaett. To set a differential, you can't have a different differential at every point. You are asking me up to 150 miles. I would have to make a study just how far out that would go from Fulton County or any other group and compare those mileages from Southern Illinois. I would have to study that. I can't answer that question offhand.

By Mr. Biaett:

Q. Well, in your opinion, to such short haul points, say 100 to 150 miles, if that is clearer to you, should there be any differential relationship between the rates at all?

A. Well, as I say, I would have to study it to see how far out, away from the mines you would be and where it would be. I couldn't answer that in a general way.

[fol. 1689] Morrison Hotel, Chicago, Illinois,
September 28, 1943.

The Hearing was resumed pursuant to adjournment, at 10:00 o'clock, a. m.

Before R. N. Trezise, Examiner; F. B. McElroy, Illinois Commerce Commission

Appearances:

As heretofore noted.

PROCEEDINGS

Exam. Trezise: When you are ready, gentlemen, we will continue. Who is to proceed next?

Mr. Wilkinson: I understood that we were to follow Southern Illinois in the presentation. If we are, why, we are ready to go ahead.

Exam. Trezise: Very well.

Mr. Wilkinson: Mr. Examiner, there are some of these copies of the prepared statement that Mr. Scott has made, that if the parties want it, to follow his evidence, why, we can distribute it at this time. The Exhibits which we will refer to this morning are the ones that were distributed to the parties after the pre-trial hearing.

Before proceeding, shall we identify these exhibits, Mr. Examiner, and I think that it will be clearer if they are identified as separate exhibits rather than a's pages.

[fol. 1690] Exam. Trezise: Yes, regardless of the fact that they may be bound together, if that is what you mean.

Mr. Wilkinson: Yes. May we go off the record to identify the exhibits?

Exam. Trezise: Yes.

(Discussion outside the record.)

(Exhibits Nos. 39 to 72, both inclusive, Witness Scott, marked for identification.)

HAROLD V. SCOTT was sworn and testified as follows:

Direct examination.

By Mr. Wilkinson:

Q. State your name and business address.

A. Harold V. Scott, 623 Cherry Street, Terre Haute, Indiana.

Q. With whom are you connected and in what capacity?

A. With the Coal Trade Association of Indiana, as traffic manager in charge of traffic and transportation affairs.

Q. For whom do you appear?

A. For the producers of Indiana coal who are members of the Coal Trade Association of Indiana.

Q. What is the Coal Trade Association of Indiana?

A. The Coal Trade Association of Indiana is a voluntary organization of corporations and firms that own and operate coal mines in the various producing districts in the State of Indiana; the members of this Association ship about 90 percent of the rail tonnage produced in the state.

[fol. 1691] Q. Are you familiar with the issues involved in this proceeding?

A. Yes, I am.

Q. Will you please give us a short resume of your qualifications with respect to freight rates on bituminous coal?

A. For more than twenty years I was employed in the Freight Traffic Department of the Chicago, Milwaukee, St. Paul and Pacific Railroad, the last twelve years of which were spent in the Coal Traffic Department handling freight rate adjustments on coal. This included freight rates on bituminous coal from mines in the states of Illinois, Indiana, and Western Kentucky, to the territories in which those coals are marketed as well as rates from the Lake Michigan and Lake Superior docks, from the Crescent Districts and from the Southwestern District. During that period I have prepared data for use in a large number of freight rate proceedings on bituminous coal before the Interstate Commerce Commission, as well as the various State Commissions. For the past three years I have been associated with the Coal Trade Association of Indiana as Traffic Manager, handling, among other duties, freight rates on bituminous coal.

Q. What is the position of the Indiana operators with respect to the proceeding in issue?

A. We filed a petition with the Commission seeking suspension of the rates from the Indiana mines to destinations [fol. 1692] in Northern Illinois and Beloit, Wisconsin. Our position with respect to Beloit and affected intermediate points, is that the present rates on bituminous coal from the Indiana mines are not less than reasonable maximum rates, but are relatively unreasonable and excessive and that the proposed rates would be unreasonable and excessive in violation of Section 1 of the Act. Also, the proposed increased rates to Beloit and affected intermediate points subject most of the producers and shippers of coal from Indiana mines to an undue prejudice and accord the producers and shippers of coal from Illinois an undue preference, and subject some producers and shippers of Indiana coal to an undue prejudice and accord other producers and shippers of Indiana coal an undue preference, in violation of Section 3 of the Act. Our position with respect to the rates to destinations in Northern Illinois is that the present rates on bituminous coal from Indiana mines are not less than reasonable maximum rates, but are unreasonable and excessive; the proposed increase in those rates, some of which are as much as 15 cents per ton, result in rates which are unreasonable and excessive in violation of Section 1 of the Act. Furthermore, the present and proposed rates to these Northern Illinois destinations subject the producers and shippers of coal from Indiana mines to an undue prejudice and accord the producers and shippers of coal from Illinois mines, who ship in interstate and intrastate commerce within the state of Illinois, an [fol. 1693] undue preference in violation of Sections 3 and 13 of the Act, and subject some producers and shippers of Indiana coal to an undue prejudice and accord other producers and shippers of Indiana coal an undue preference, in violation of Section 3 of the Act.

To the Northern Illinois destinations the standard differentials between the Indiana mines, on the one hand, and the Illinois mines on the other, were disrupted in 1930; such disruption has been continued in effect; to certain of these destinations a further disruption is proposed by the carriers. It is our position that under Sections 3 and 13 of the Act, the Commission should prescribe rates that

will result in the restoration of the standard differentials between the Illinois mines on the one hand and the Indiana mines on the other, and as between the Indiana mines themselves which standard differentials existed prior to 1930 to these Northern Illinois destinations, and which has existed and which exists today to the territories, north, northwest, and west of the Northern Illinois destination territory.

Q. By whom were the exhibits which you will introduce in this proceeding compiled?

A. They were compiled by me and under my direct supervision.

Q. Is the destination territory involved in this proceeding a substantial market for Indiana coal?

A. Yes, the northern part of Illinois and the southern [fol. 1694] part of Wisconsin are natural markets for Indiana coal.

Q. Can you tell us the number of tons of coal shipped from mines in Indiana to the destinations involved in this proceeding during any specific period?

A. Yes, during the eight-month period, April 1st to November 30th, 1942, there was a total of 268,430 tons shipped from the Indiana mines to the destinations involved in this proceeding.

Q. How much of this tonnage moved from mines in the Brazil-Clinton and Linton-Sullivan District?

A. 162,060 tons were shipped from mines in those two groups.

Q. What proportion of this 162,060 tons which moved from all mines in the Brazil-Clinton and Linton-Sullivan Group were shipped from mines on the C. M. St. P. & P. Railroad?

A. Out of this total of 162,060 tons shipped from all mines in the Brazil-Clinton and Linton-Sullivan Groups, a total of 122,726 tons moved from mines on the C. M. St. P. & P. Railroad in those two groups. Therefore, from mines located on railroads other than the C. M. St. P. & P., there was shipped during this period 39,334 tons. In other words, approximately 75 percent of the total tonnage shipped from the Brazil-Clinton and Linton-Sullivan Groups moved from mines on the C. M. St. P. & P. Railroad.

Q. How do the tonnages shipped from all of the mines in Indiana to this destination territory during this eight

month period compare with the tonnages shipped from [fol. 1695] mines on the C. M. St. P. & P. Railroad in the Brazil-Clinton and Linton-Sullivan Districts?

A. As previously stated, during this eight month period there was a total of 268,430 tons shipped from all mines in Indiana to the destinations involved in this proceeding and out of this total, 122,726 tons moved from mines on the C. M. St. P. & P. Railroad in the Brazil-Clinton and Linton-Sullivan Districts. Therefore, approximately 45 per cent of the total tonnage from all Indiana mines originated at mines on the C. M. St. P. & P. Railroad.

Q. Are rates in effect today from mines on the C. M. St. P. & P. Railroad in the Brazil-Clinton and Linton-Sullivan Districts to the destinations involved in this proceeding on their standard differential with rates from mines on other railroads in Illinois and Indiana?

A. The rates from mines on the C. M. St. P. & P. Railroad in the Brazil-Clinton and Linton-Sullivan Districts are on their standard differential with the rates from the Illinois Groups to Rockford, Freeport, Byron, and many other destinations. The rates from mines on other railroads in the Brazil-Clinton and Linton-Sullivan Groups and from all mines in the Princeton-Ayrshire and Boonville Groups are not on their standard differential with the Illinois Groups or with rates from the Brazil-Clinton and Linton-Sullivan mines on the C. M. St. P. & P. Railroad. These rates are on a higher basis.

Q. Is it your intention to show the rates and differentials [fol. 1696] as they now exist, as they are now proposed, and as they should be, later in your testimony?

A. Yes.

Q. Is there a substantial investment in coal mining property in Indiana?

A. Yes, there is a substantial investment in coal mining property in Indiana. The approximate figures, as compiled from information furnished us by our members, are as follows: Brazil-Clinton, $6,000,000; Linton-Sullivan, $12,000,000; Princeton-Ayrshire, $13,500,000; and Boonville $3,500,000, a total of $35,000,000.

Q. Have you prepared a map of the destination territory involved in this proceeding?

A. Yes, and it has been marked Exhibit No. 39. On this map the destination territory involved in this proceed-

ing is that within the heavy black lines, and the destinations indicated by large black dots are the representative points which have been selected by us for the purpose of comparing rates, distances, differentials, and so forth.

(Exhibit No. 39, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. Have you prepared exhibits which show distances, routes, rates, and composite average distances and rates to the representative points?

A. Yes.

[fol. 1697] Q. Will you now proceed to introduce these exhibits?

A. My next exhibit, which has been marked No. 40, is a statement of the present and proposed rates from the Indiana and Illinois groups to each representative destination.

(Exhibit No. 40, Witness Scott, received in evidence.)

The Witness: My next exhibit, which has been marked No. 41, is a statement showing the distances via the short tariff routes from the Indiana groups to each representative destination. To each destination the exhibit shows the origin group, initial carriers, total origin points, total miles, average distance, present rate, and the short tariff route.

(Exhibit No. 41, Witness Scott, received in evidence.)

The Witness: My next exhibit, which has been marked No. 42, is a statement showing the distance via the short tariff routes from all the Illinois groups to each representative destination. The detail shown is the same as on Exhibit No. 41 from the Indiana groups.

(Exhibit No. 42, Witness Scott, received in evidence.)

The Witness: My next exhibit, which has been marked No. 43, is a statement showing the origin points on each origin railroad in each origin group used in Exhibits Nos. 41 and 42, inclusive. Where an origin is served by more [fol. 1698] than one railroad, it is so indicated by an appropriate reference mark, such reference mark naming the railroads on which the origin is located.

(Exhibit No. 43, Witness Scott, received in evidence.)

The Witness: My next exhibit, which has been marked No. 44, is a statement showing the composité average distance via the short tariff routes from the Indiana Groups to each representative destination and to a composite of all representative points from each group and from all groups as a whole.

(Exhibit No. 44, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. Mr. Scott, are you going to discuss these exhibits later on in your testimony in more detail?

A. No, sir, not these particular ones. These are the foundation for previous exhibits.

Q. Now, in your Exhibit No. 40, will you refer back to that.

A. Yes, sir.

Q. You have shown an average for these representative points in Illinois and have included in that average Beloit, Wisconsin?

A. Yes, sir.

Q. Can you give us figures which would show the average with respect to the representative destinations in Northern Illinois exclusive of Beloit?

[fol. 1699] A. Yes, I can.

Q. Can you read those slowly so that the parties could fill in the figures at the bottom of Exhibit 40, if they so desired?

A. Yes. These are the averages from the Indiana Groups to the representative points shown on that page in Northern Illinois, in other words, not including Beloit. They are, as far as Brazil-Clinton, under column A, 189; column B, 197. I will read these straight across, gentlemen. 195, 204, 204, 210.

Exam. Trezise: Where is 210?

The Witness: Under Princeton-Ayrshire, column 7. Column 8 is 206; 213, 122, 128, column 12 is 159, 163, 157, 160, 165, 169, 159, 163; under column 20, 157, 160, 183, 199; under column 24, 178, 185, 199, 204; under column 28 is 208, 213, 199, 205, 210. The last column is 215.

By Mr. Wilkinson:

Q. Now, Mr. Scott, likewise on your Exhibit No. 44, the exhibit shows averages and totals for the destinations in Northern Illinois and Beloit.

A. Yes, sir.

Q. Can you give us the figures just for the Illinois destinations?

A. Yes, I have those figures and I will call them off and they can be inserted on the exhibit.

Mr. McElroy: What exhibit is that?

The Witness: Exhibit 44. These are the grand total and averages to the representative points in Northern Illinois, [fol. 1700] in other words, not including Beloit. Under column 2 is 312, total miles is 80,242.6, average distance 257.2. Linton-Sullivan, under column 5, 348; column 6, 100,629.2; column 7, 289.1. Princeton-Ayrshire, under column 8, 339; total miles, 120,607.3; average distance, 355.8; Boonville, column 11, 96; total miles, 38,012.0; average distance, 395.9. Composite of Indiana groups, column 14, 1,095; total miles, 339,491.1; average distance, 310.0.

By Mr. Wilkinson:

Q. Now, Mr. Scott, if on any of the subsequent exhibits that you refer to as you proceed contain Illinois and Beloit combined, will you give us the figures for Illinois destinations alone, where your exhibit shows them with Illinois and Beloit combined.

A. Yes, sir. My next exhibit, which has been marked No. 45, is a statement showing the composite average distance via the short tariff routes from all the Illinois Groups to each representative destination and to a composite of all representative points from each group and from all groups as a whole. On page 5 of this exhibit, in the bottom panel, we show to all destinations the total billing points, the total miles and the average distance. This includes Beloit, Wisconsin. I would like to give the same figures for a composite of the Illinois Groups to the Northern Illinois destinations only.

Exam. Trezise: Where are you starting?

Mr. Wilkinson: At the very bottom of page 5.

[fol. 1701] The Witness: 2,953.

Mr. Stadell: Instead of 3,217?

The Witness: Not instead of it, but along with it. Total miles. 853,571.8; average distance, 289.1.

(Exhibit No. 45, Witness Scott, received in evidence.)

The Witness: My next exhibit, which has been marked No. 46, is a statement showing the composite average distance via the short tariff routes, and the composite present and proposed rate, from the Southern Illinois and Indiana Groups to the representative destinations.

Here again, I would like to give the figures to the representative points in Northern Illinois, not including Beloit, which are as follows: under column 2, 899; column 3, 333,751.8; column 4, 371.2; column 5, 1,095; column 6, 339,491.1; column 7, 310.0; column 8, 209; column 9, 215; column 10, 197; column 11, 205.

(Exhibit No. 46, Witness Scott, received in evidence.)

The Witness: My next exhibit, which has been marked No. 47, is a statement of the average distances via the short tariff routes from the Indiana Groups and from a composite of the Indiana Groups and from the Southern Illinois group to the representative destinations, and to all representative destinations as a whole, also the difference in distance [fol. 1702] the Indiana Groups are under or over Southern Illinois. The letter "a" opposite certain figures indicates the distance over Southern Illinois. All other distances shown are under Southern Illinois.

Here again, I would like to give the figures to the representative destinations in Northern Illinois, not including Beloit. Starting with column 2, and reading across the page: 371.2; 257.2; 289.1; 355.8; 395.9; 310.0; 114.0; 82.1; 15.4; a24.7; 61.2.

(Exhibit No. 47, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. Will you please describe briefly the basis upon which, generally, the rates from the Illinois, Indiana and Western Kentucky mines to destinations in Northern Illinois, Wisconsin, Iowa, Minnesota, and other western states are constructed.

A. The freight rate structure on bituminous coal from mines in Illinois, Indiana and Western Kentucky to Northern Illinois, Wisconsin, Iowa, Minnesota, and to destina-

tions in other western states, is composed of the rates from nine origin groups in Illinois, five origin groups in Indiana, and one in Western Kentucky. The rates from the nine origin groups in Illinois are definitely related, as between those groups, by fixed differentials. The rates from the five origin groups in Indiana are definitely related, as between those groups, by fixed differentials. The rates from Western Kentucky are related to the rates from [fol. 1703] Southern Illinois by a fixed differential, and in addition, the rates from the nine origin groups in Illinois and the five origin groups in Indiana are related by fixed differentials.

For many years Southern Illinois has been recognized as the base group in Illinois and Brazil-Clinton as the base group in Indiana. In every general increase or decrease in, or revision of, the rates on bituminous coal, the rates were determined first from Southern Illinois, and the rates from the other Illinois groups and Western Kentucky were then determined by deducting from, or adding to, the Southern Illinois rates the standard differentials that have long existed between those groups. This procedure has been departed from in two instances, the Midland Electric Case 232 ICC 5, involving the revision of rates to destinations in the state of Iowa, in which case the Interstate Commerce Commission prescribed rates from the Fulton-Peoria Group as the base group and the rates from the other groups in Illinois were related thereto by certain differentials, and in the Fairbanks-Morse case, Docket No. 25419, and related cases, decided March 3, 1942, in which the Commission prescribed rates to Janesville and Fort Atkinson, Wisconsin, from the Fulton-Peoria Group as the base group and continued in effect the existing differentials from the other Illinois groups and the Indiana groups.

In addition to those two, the Commission used the same [fol. 1704] formula in prescribing rates in the South Dakota case.

In determining the rates from Indiana, the rates are first established from the Brazil-Clinton Group, the base group in Indiana, on the basis of the standard differential Brazil-Clinton under Southern Illinois, the base group in Illinois, and the rates from the other Indiana groups are then determined by adding to the Brazil-Clinton rates the standard differentials that have long existed between the

rates from that group, on the one hand, and the other Indiana groups on the other.

Q. State briefly how the mines in Indiana are grouped for rate making purposes and describe the differentials that apply between the various groups.

A. For rate making purposes the Indiana mines are divided into four major freight rate groups, namely: Brazil-Clinton, Linton-Sullivan, Princeton-Ayrshire, and Boonville. In addition there is one mine in Evansville and one small mine on the E. & O. V. Railroad near Evansville from which the Evansville rates apply.

Except to short haul destinations, the rates from the four major Indiana groups are differentially related. The rate from each group is a part and parcel of the entire rate structure from the mines in Indiana. Brazil-Clinton is the base group and, except to Chicago and to certain destinations in Northern Illinois such as Rockford, Freeport, and contiguous points, the rates from the other groups are differentially related over Brazil-Clinton by the amounts of 10 cents from Linton-Sullivan, 17 cents from Princeton-[fols. 1705-1707] Ayrshire, and 20 cents from Boonville. To Chicago the differential over Brazil-Clinton is 10 cents from Linton-Sullivan, 22 cents from Princeton-Ayrshire, and 25 cents from Boonville. The differentials to Chicago were established in 1927 as the result of a reduction of 5 cents in the rates from Brazil-Clinton and Linton-Sullivan Groups, which reduction was prescribed by the Interstate Commerce Commission in the Illinois-Indiana Coal Cases, 128 ICC 265. To certain destinations in Northern Illinois such as Rockford, Freeport and contiguous points the differentials over Brazil-Clinton are: Linton-Sullivan 5 cents, Princeton-Ayrshire, 12 cents, and Boonville 15 cents. This difference in differential is due to the fact that to these points the differential Linton-Sullivan over Brazil-Clinton was 5 cents in lieu of the standard differential of 10 cents.

Q. Will you state on what basis rates are maintained from Indiana mines to this destination territory?

A. To this entire Northwest destination territory, except the certain Northern Illinois points referred to, the differential Brazil-Clinton under Southern Illinois is, and has been, 30 cents and the differential under Southern Illinois from the other Indiana groups are: Linton-Sullivan 20 cents, Princeton-Ayrshire 13 cents and Boonville 10 cents.

These differentials have applied generally in this territory for many, many years.

. . . . . .

[fol. 1708] By Mr. Wilkinson:

Q. Mr. Scott; to your knowledge, and from your study of rate histories, can you tell us approximately how many years this differential adjustment that you have described to Eastern Iowa, Southeastern Minnesota, Wisconsin and Northern Illinois has existed?

A. Yes, sir. It has existed for more than 20 or 25 years.

Mr. Biaett: Your statement says it has existed for more than 25 years.

The Witness: Yes, sir.

By Mr. Wilkinson:

Q. Now, Mr. Scott, will you proceed with your statement.

A. To the certain destinations in Northern Illinois, such as Rockford and Freeport, the differentials under Southern Illinois were on the following basis: Brazil-Clinton 30 cents under, Linton-Sullivan 25 cents under, Princeton-Ayrshire 18 cents under and Boonville 15 cents under. As previously stated, this difference in differentials was due to the fact that the differential Linton-Sullivan over Brazil-Clinton was 5 cents in lieu of the standard differential of 10 cents.

Q. You stated that these differentials to Northern Illinois "were" in effect. Will you tell us what they are today and how the change was brought about?

A. The differentials, which had been in effect for years, Indiana groups under Southern Illinois of 30 cents from [fol. 1709] Brazil-Clinton, 25 cents from Linton-Sullivan, 18 cents from Princeton-Ayrshire, and 15 cents from Boonville to Northern Illinois were disrupted by the order of the Illinois Commerce Commission in Docket Nos. 13569 and 13558, in which that Commission reduced the rates from Southern Illinois to Rockford and Freeport from $2.17 to $2.00 per ton and ordered the continuation of the differentials between the rates from Southern Illinois, on the one hand, and the other Illinois groups on the other; the effect of which was to reduce rates from all Illinois groups by 17 cents. These rates were published effective August

20, 1930. Later, the Illinois Commerce Commission issued its order in Docket No. 14009 which prescribed a reduction of 14 cents per ton in the rates from the Springfield and Southern Illinois groups to Dixon, the Southern Illinois rate being reduced from $2.04 to $1.90 and the Springfield rate from $1.74 to $1.60. These rates were published effective July 1, 1930.

These reductions in the Illinois rates resulted in the narrowing of the differential Brazil-Clinton under Southern Illinois to Rockford, Freeport and affected intermediate points from 30 cents to 13 cents per ton and to Dixon and affected intermediate points from 30 cents to 16 cents per ton. Likewise, it narrowed the differentials by the same amount in cents per ton between the other Illinois groups, on the one hand, and the Indiana groups on the other.

When these 1930 reductions in Illinois intrastate rates [fol. 1710] were made, no corresponding reductions were made in the rates from the Indiana mines. The failure of the Indiana railroads to reduce the Indiana rates in harmony with the Illinois reductions resulted in complete disruption of the relationship which had been in existence for many years.

Q. Do you have a map which shows this northwest destination territory and the differentials, Indiana groups versus Southern Illinois, applicable thereto?

A. Yes, and it has been marked Exhibit No. 48. On this map we have shown by heavy black boundary lines, the destination territories and the differentials, Brazil-Clinton, Linton-Sullivan, Princeton-Ayrshire and Boonville under Southern Illinois which applies in connection with the rates to each of the destination areas.

To the Chicago district, the differentials under Southern Illinois are: Brazil-Clinton 40 cents, Linton-Sullivan 30 cents, Princeton-Ayrshire 18 cents, and Boonville 15 cents. To the destinations in eastern Wisconsin located generally along the Lake Michigan shore, the differentials are 35, 25, 18 and 15 cents. To the remainder of the State of Wisconsin, to Southeastern Minnesota and Northeastern Iowa, the differentials are 30, 20, 13 and 10 cents. The same differentials applied to all of Northern Illinois prior to the 1930 Illinois reductions with the exception of the rates to Rockford, Freeport and affected intermediate points where [fol. 1711] the differentials under Southern Illinois were: Brazil-Clinton 30 cents, Linton-Sullivan 25 cents, Princeton-

Ayrshire 18 cents and Boonville 15 cents. As previously explained, this difference was due to the fact that to Rockford, Freeport and affected intermediate points, the differential Linton-Sullivan over Brazil-Clinton was 5 cents in lieu of the standard differential of 10 cents. To the remainder of Iowa and Minnesota and to the states of North Dakota, South Dakota and Nebraska, the differentials Indiana versus Southern Illinois are: Brazil-Clinton 10 cents under Southern Illinois, Linton-Sullivan the same rate, Princeton-Ayrshire 7 cents over, and Boonville 10 cents over. Of the total Indiana shipments to this northwest territory, a very small percentage less than 10 per cent, moves to this latter territory.

Q. What differentials apply as between the Indiana rate origin groups to all the territory shown on this exhibit?

A. Except to Chicago and the Rockford-Freeport territory, the Indiana groups are the following amounts over Brazil-Clinton, the base group: Linton-Sullivan 10 cents, Princeton-Ayrshire 17 cents, and Boonville 20 cents.

Q. Are the rates to Northern Illinois a part of the rate structure that applies generally to the territory outlined on the map which has been marked Exhibit No. 48?

A. Yes, the rates to Northern Illinois are part of the rate structure applying to the territory north, northwest and [fol. 1712] west of Chicago. Therefore, the rate differential relationship as between the Illinois groups themselves, as between the Indiana groups themselves, and as between the Illinois, Indiana, and Western Kentucky groups should be on the same basis. There can be no justification for a different basis of differentials to Northern Illinois than applies generally to Wisconsin, Northeastern Iowa and Southeastern Minnesota, of which destination territory Northern Illinois is an integral part.

Q. Have these differentials ever been the subject of a proceeding before the Interstate Commerce Commission?

* * * * * * *

[fol. 1713] The Witness: The question of the differentials was also before the Commission in I&S Docket No. 4368, decided April 10, 1939, and reported in 232 ICC 151, which proceeding involved rates from mines in Illinois, Indiana, and Western Kentucky to Beloit, Wisconsin, and destina-
[fol. 1714] tions in Northern Illinois. In that proceeding

the carriers proposed to disrupt the relationship between the Illinois rates on the one hand and the Princeton and Boonville Group rates on the other, as well as the relationship between the Brazil-Clinton and Linton-Sullivan Groups on the one hand and the Princeton-Ayrshire and Boonville Groups on the other. The Commission found——

Mr. Stadell: Now, I have the same objection to the next sentence in which the witness states his conclusion as to what the Commission found in that case, and I ask that it be stricken.

Mr. Wilkinson: Well, suppose he reads it first. Then make your motion afterwards.

Mr. Stadell: Well, I object to him stating it in his testimony in the record.

Mr. Morgan: I join in that objection too.

Exam. Trezise: Have you a method of avoiding that objection by stating it in another way?

Mr. Wilkinson: Yes, you could word it this way and substitute this for the last sentence of that paragraph: The Commission approved certain rates set out in its order in that case, which rates would have resulted in differentials which I have heretofore stated are the standard differentials.

Mr. Stadell: Same objection to that statement. It still substitutes Mr. Wilkinson's conclusion as to what the Com- [fol. 1715] mission found for the statement in the Commission's report.

Mr. Wilkinson: They found rates. I didn't say what rates.

Exam. Trezise: I think we will let it stand. We can't be too technical about it. The Commission is not going to be misled, I hope, by its own decisions.

Mr. Wilkinson: I am very sure, Mr. Trezise, the Examiner, writing this report, is very familiar with all these proceedings.

Exam. Trezise: Let us pass it. Go ahead with the testimony. Now, have you modified the testimony according to the statement of Mr. Wilkinson here, and does the witness adopt that as his testimony?

The Witness: Correct.

By Mr. Wilkinson:

Q. Would the establishment of the suspended rates to destinations in Northern Illinois result in a differential relationship between the Indiana groups on the one hand, and the Illinois groups on the other, the same as that which existed between those groups prior to the reduction in Illinois rates made in 1930?

A. No, the suspended rates to Northern Illinois destinations would result in: (1) to most of the destinations a continuation of the disruption in differentials between the Illinois groups on the one hand, and the Indiana groups on the other, which disruption was first made in 1930; (2) to other destinations it will further disrupt the differential relationship between the Illinois groups and the Indiana [fol. 1716] groups; (3) to other destinations it will, for the first time, disrupt the standard differential relationship between the Illinois groups on the one hand, and the Indiana groups on the other, which differential relationship has existed for many years; and (4) to some destinations the standard differentials between the Indiana groups will be disrupted.

(Exhibit No. 48, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. Have you prepared an exhibit comparing the short tariff route distances from Southern Illinois with those from the Indiana groups to points in Minnesota, Iowa and Wisconsin as shown in Appendix "D" of the decision of the Commission in Docket No. 25595, reported in 204 ICC 225 with those to the representative destinations in the territory here involved?

A. Yes, and it has been marked Exhibit No. 49. This is a statement showing the distances to stations in Minnesota, Iowa and Wisconsin enumerated in Appendix "D" of the decision in ICC Docket No. 25595 showing the short tariff route distances from Southern Illinois and the Indiana groups, and the composite short tariff route distance to each state and, on page 2, the composite to the 70 destinations; there is also shown on page 2 of this exhibit the same information to the representative destinations in Northern Illinois and Beloit and the difference in distance the Indiana [fol. 1717] groups are under or over Southern Illinois.

Now, in that connection I would like to correct a typographical error on page 2. Under column 3, the last figure in the column, which is 371.6, will you please make that 374.0.

Q. Can you give us what the averages would be in that last panel on page 2 of the exhibit, if you eliminate Beloit and show only the average to the representative destinations in Northern Illinois?

A. Yes, those figures would be as follows: under column 3, and across the board, 371.2; 257.2; 289.1; 355.8; 395.9; 114.0; 82.1; 15.4; and the last column is a24.7.

(Exhibit No. 49, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. What are the differences in distance, Southern Illinois versus each of the Indiana origin groups, to the representative destinations, based upon the composite average distance?

A. The differences in distance to the representative destinations including Beloit, page 2 of this exhibit, are: Brazil-Clinton, 115.8 miles under Southern Illinois, Linton-Sullivan 83.6 miles under Southern Illinois, Princeton-Ayrshire 16.4 miles under Southern Illinois, and Boonville 23.4 miles over Southern Illinois.

[fol. 1718] Q. Now, those figures include Beloit?

A. Yes, sir.

Q. And if you excluded Beloit, the figures would be the ones you read into the record just a moment ago?

A. That is correct, sir.

Q. How do the differences in distance to the 70 points included in Appendix "D" of Docket No. 25595 compare with the differences in distance to the representative destinations in the territory involved in this proceeding?

A. The differences in distance as shown on page 2 of Exhibit No. 49 are as follows: from Brazil-Clinton to the 70 representative destinations in Docket No. 25595, the difference in distance under Southern Illinois was 77 miles, while to the representative destinations in Northern Illinois and Beloit the difference in distance is 115.8 miles, a difference of 38.8 miles in favor of the Northern Illinois-Southern Wisconsin destinations.

Q. Now, if you excluded Beloit?

A. If you excluded Beloit, the differences would be 114.0 miles, a difference of 37.0 miles in favor of Northern Illinois.

Q. Then that is to say that the difference in distance in favor of the Indiana groups as a whole to these destinations in Northern Illinois is 114 miles in favor of Indiana as against Southern Illinois?

A. That is correct.

[fol. 1719] Q. Whereas, as to the 70 points in Docket 25595 the difference in favor of all of Indiana as compared to Southern Illinois was 77 miles.

A. That is correct.

Mr. Stadell: May I ask a question right there. Are you talking about all of Indiana under Southern Illinois, or Brazil-Clinton?

The Witness: Brazil-Clinton. If we said all of Indiana, it should have been Brazil-Clinton.

Mr. Wilkinson: It should have been Brazil-Clinton. Excuse me. Now, will you proceed with your statement, Mr. Scott.

The Witness: Linton-Sullivan to the 70 destinations is 49 miles under, while to the representative destinations in Northern Illinois, including Beloit, it is 83.6 miles, a difference of 34.6 miles in favor of the Northern Illinois-Southern Wisconsin destinations to the representative destinations in Northern Illinois only it is 82.1 miles, a difference of 33.1 miles in favor of the Northern Illinois destinations.

By Mr. Wilkinson:

Q. You mean in favor of Linton-Sullivan to the destinations in Northern Illinois and Beloit?

A. Yes, sir. From the Princeton-Ayrshire District to the 70 destinations the distance exceeded Southern Illinois by 20 miles, while to the representative destinations in Northern Illinois-Southern Wisconsin it is 16.4 miles under Southern Illinois, a difference in distance of 36.4 miles in [fol. 1720] favor of Northern Illinois-Southern Wisconsin destinations; to the Northern Illinois destinations only, that is not including Beloit, the difference in distance is 35.4 miles in favor of Northern Illinois destinations.

From the Boo ville District the distance to the 70 destinations exceeded Southern Illinois by 70 miles, while to the representative destinations, including Beloit, the distance

exceeds Southern Illinois by 23.4 miles, a difference in distance of 46.6 miles in favor of the Northern Illinois-Southern Wisconsin destinations; and to the representative destinations in Northern Illinois, not including Beloit, a difference in distance of 45.3 miles.

Q. What you mean by that last paragraph is that the amount by which the distance from Boonville exceeds Southern Illinois is less to these destinations in Northern Illinois than it is to the 70 destinations shown in the other group?

A. Yes, sir.

Q. What were the issues involved in the case to which you have referred?

Mr. Stadell: Now, I object to that question, Mr. Examiner. The Commission's report will show what the issues were.

Mr. Morgan: I object. It is purely argumentative.

Mr. Stadell: Certainly it is argumentative in view of the statements Mr. Scott was contributing to the Commission a while ago.

[fol. 1721] Exam. Trezise: I think you can tell what the allegations were in the complaint, if you remember. I think that is proper. Go ahead.

The Witness: That complaint involved the differential relationship between Southern Illinois, on the one hand, and the Indiana groups on the other to destinations in Wisconsin, Southeastern Minnesota and Northeastern Iowa.

[fol. 1722] By Mr. Wilkinson:

Q. You have referred to the disruption of the 30 cent differential Brazil-Clinton under Southern Illinois to destinations in Northern Illinois in 1930-1932, and, in addition, have stated that the rates now under suspension would result in a further disruption to some of these points and would also disrupt the 30 cent differential for the first time to other of these points.

A. Yes, that is correct.

Q. Do you have a map on which this situation is indicated?

A. Yes, and it has been marked Exhibit No. 50. This map shows Beloit, Wisconsin and the Northern Illinois destination territory involved in this proceeding. The colored lines of blue, green, and red, indicate the destinations involved in this adjustment which are not on the stand-

ard differential Brazil-Clinton 30 cents under Southern Illinois, or to which the present standard differential of 30 cents would be disrupted by the establishment of the suspended rates.

To all this territory the standard differential of 30 cents Brazil-Clinton under Southern Illinois was in effect prior to the reductions ordered by the Illinois Commerce Commission in 1930.

The blue lines indicate the destinations to which this standard differential was disrupted in 1930-1932, because of the reductions made in the Illinois rates in compliance with the orders of the Illinois Commerce Commission in the Rockford-Freeport-Dixon Cases.

[fol. 1723] The green line indicates the destinations to which the standard differential was disrupted in 1930-1932, and to which the rates now proposed by the carriers would result in a further disruption. For example, to stations Wasco, Lilly Lake, Virgil, and Richardson on the Chicago Great Western Railroad, located between Chicago and Sycamore, in the eastern part of this territory and indicated by a green line, the present differential Brazil-Clinton under Southern Illinois is 21 cents per ton, which differential was formerly 30 cents but was narrowed by the 1930-1932 reduction in Illinois rates: In this proceeding the carriers are now proposing to further narrow this differential to 16 cents, Brazil-Clinton under Southern Illinois.

The red lines indicate the stations to which the differential Brazil-Clinton under Southern Illinois is today the standard differential of 30 cents, but to which the rates proposed by the carriers and under suspension in this proceeding would disrupt this standard differential by varying amounts.

For example, to Harper, Lanark, and Fay, Illinois, on the C. M. St. P. & P. Railroad in the western part of this territory, and outlined in red, the suspended rates result in the narrowing of the differential Brazil-Clinton under Southern Illinois from 30 cents to 25 cents except from mines on the C. M. St. P. & P. Railroad. To stations Florence and Shannon, it is proposed to narrow the differential from 30 to 13 cents except from mines on the C. M. St. P. & P. Likewise to stations Shirland, Durand, Davis, Rock City and Dakota, it is proposed to narrow the differential from 30 cents to [fol. 1724] 23 cents from all mines. The same situation exists to some stations on other railroads. For example,

to Gilberts, Huntley, Union, Marengo, and Garden Prairie, located on the Chicago and North Western Railroad west of Chicago, and indicated by a red line, it is proposed to reduce the present differential of 30 cents to 28 cents.

We have shown in this exhibit how the standard differential of 30 cents Brazil-Clinton under Southern Illinois has been disrupted, how it is proposed to make a further disruption and to create new disruptions. What has been shown with respect to Brazil-Clinton versus Southern Illinois is also true with respect to the differentials from the Linton-Sullivan, Princeton-Ayrshire and Boonville groups versus the Southern Illinois group as well as other groups in Illinois.

(Exhibit No. 50, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. Have you prepared a statement which shows a history of the rates and differentials from the Southern Illinois, Springfield and Brazil-Clinton Groups to the representative destinations in Northern Illinois?

Mr. Wood: Before he answers that question, may I inquire as to the continued use of the word "standard" with reference to differentials?

Mr. Wilkinson: The purpose of that is to try to conserve time, because by the use of "standard differentials" we [fol. 1725] mean a differential of Brazil-Clinton 30 cents under Southern Illinois and the rates from Indiana, Linton-Sullivan 10 cents over Brazil-Clinton, Linton-Sullivan 17 cents over Brazil-Clinton, and Boonville 20 cents over Brazil-Clinton. By saying the "standard differential" we save time rather than to give you all of that statement I just made.

Mr. Wood: Why not just say "differentials."

Exam. Trezise: Are you satisfied?

Mr. Wood: No, I am not satisfied with the continued use of "standard" in there. It is argumentative and an editorial comment.

Mr. Kaier: It is defined pretty clearly now, Mr. Examiner.

Exam. Trezise: The thing that doesn't seem to be exactly clear from your testimony—it is clear from your witnesses—when you say the rates under suspension would do this,

and the rates under suspension would do that. Now, what rates under suspension? You mean the state rates, or do you mean the interstate rates, or do you mean both the state rates and the interstate rates?

The Witness: Both the state rates and the interstate rates.

Mr. McElroy: Well, you haven't any state rates from Indiana mines.

The Witness: When I talk about the differential Southern Illinois versus Indiana to Rockford, for example, I am talk-
[fols. 1726-1727] ing about the Illinois intrastate rates, Southern Illinois to Rockford, and the interstate rates from Indiana to Rockford.

Exam. Trezise: So that in each instance where you say the rates under suspension, you may in most instances involve both the state and the interstate rates under suspension, and in other instances it probably involves only one of them?

The Witness: Yes, sir, that would be right.

. . . . . .

[fol. 1728] By Mr. Wilkinson:

Q. Have you prepared a statement which shows a history of the rates and differentials from the Southern Illinois, Springfield and Brazil-Clinton groups to the representative destinations in Northern Illinois?

A. Yes, and it has been marked Exhibit No. 51. This is [fol. 1729] a statement showing the rates from the Southern Illinois, Springfield, and Brazil-Clinton groups to the representative destinations, in effect on July 19, 1925, in 1930-1932, at the present time and those now proposed, also the differential relationship Brazil-Clinton under Southern Illinois, Brazil-Clinton versus Springfield and Springfield versus Southern Illinois.

The July 19, 1925 rates were published by the carriers as a result of the so-called Blue Book check, the purpose of which was to restore the origin group differentials which had been disrupted by the percentage increase on August 26, 1920, as authorized by Ex Parte 74 and the 10 per cent reduction of July 1, 1922. Following the general percentage increase in 1920 and the 10 per cent reduction in 1922, efforts were made by the operators and the carriers to restore the standard differentials and an exhaustive check

and revision of the rates by the carriers was undertaken, the result of which was released in the so-called Blue Book Publication Announcement, C. C. P. A. 117, which was published in January, 1925, to become effective February 19, 1925, but which were suspended upon protest. During the period of suspension, conferences were held by the shippers and carriers with the Interstate Commerce Commission with a view to making certain changes in the proposed rates. Director Hardie of the Bureau of Traffic and Messrs. Ward and Powers of the Suspension Board of the [fol. 1730] Interstate Commerce Commission actively participated in these conferences. After certain minor adjustments were made in the proposed rates the suspension was withdrawn and the rates became effective on July 19, 1925.

The 1930-1932 rates from the Southern Illinois and Springfield groups are those established pursuant to the orders of the Illinois Commerce Commission; the present rates are those now in effect and the proposed rates are those under suspension in this proceeding.

Exam. Trezise: Is that in the Rockford-Freeport cases, the 1930-1932 cases?

The Witness: Yes.

Mr. Wilkinson: Rockford, Freeport and Dixon rates.

The Witness: Particular attention is directed to the lower panel of this exhibit. On July 19, 1925, the differential Brazil-Clinton under Southern Illinois was uniformly 30 cents per ton, and Brazil-Clinton and Springfield were on the same basis. The differential Springfield under Southern Illinois was uniformly 30 cents per ton. However, the 1930-1932 rates resulted in the narrowing of the differential Brazil-Clinton under Southern Illinois from 30 cents to 13 cents in some instances, particularly to such important consuming points as Rockford and Freeport, and from 30 to 16 cents to other destinations including such important points as Dixon, St. Charles, Rochelle and others. Likewise, the publication of reduced rates on that [fol. 1731] date from the Springfield Group resulted in a differential Brazil-Clinton versus Springfield of 17 cents Brazil-Clinton over Springfield to some of the destinations and 14 cents to others. Particular attention is directed to the fact that the 1930-1932 rates continued in effect the

standard differential of 30 cents Springfield under Southern Illinois.

The present rates continue in effect the disrupted differential adjustment Brazil-Clinton versus Southern Illinois, resulting from the reduced rates published from the Illinois mines in 1930-1932, except to Stations Byron, Freeport and Rockford from mines on the C. M. St. P. & P. Railroad via that railroad direct. The restoration of the 30 cents differential from those mines is due to the action of the Milwaukee in later voluntarily reducing its rates to Rockford and Freeport and intermediate points the same amount in cents per ton as was made from the Illinois groups in order to restore its differential with those groups.

The carriers are now proposing not only to continue these disrupted differentials in effect but are proposing to other destinations to create disruptions for the first time. For example, to Davis the differential has been and is the standard differential of 30 cents, but the carriers are proposing to narrow this differential to 23 cents except from mines on the C. M. St. P. & P. Railroad. To Lanark and [fol. 1732] Marengo, the differential has been and is the standard differential of 30 cents, but the carriers are now proposing to reduce Lanark to 25 cents, except from mines on the C. M. St. P. & P. Railroad, and to narrow the Marengo differential to 28 cents from all mines in that group. It will also be noted that to Wasco they are proposing to narrow the present differential from 21 cents to 16 cents under Southern Illinois, although the standard differential on July 19, 1925, was 30 cents.

This exhibit deals with the rates and differentials from the Southern Illinois and Springfield Groups on the one hand, and the Brazil-Clinton Group on the other. The Brazil-Clinton Group has been used as representative of the Indiana Groups because it is the base group in Indiana. The other groups in Indiana, namely, the Linton-Sullivan, Princeton-Ayrshire, and Boonville Groups, are affected to the same extent as is the Brazil-Clinton Group inasmuch as those groups are related to the Brazil-Clinton Group and to the Illinois Groups by fixed differentials.

Mr. McElroy: Right at that point, Mr. Scott, may I ask you this question: you speak of the proposed disruption of the differential to Marengo and Wasco, by the carriers. Is that proposed disruption affected by any outstanding order

of the Interstate Commerce Commission, do you know, or is that a voluntary action of the carriers?

The Witness: That is a voluntary action of the carriers [fol. 1733] in making this adjustment that is before us.

By Mr. Wilkinson:

Q. What are the carriers proposing with respect to the differential Springfield under Southern Illinois to these representative destinations?

A. This exhibit shows the carriers are proposing the continuation of the 30 cent standard differential Springfield under Southern Illinois to these representative destinations with the exception of Lanark, where it is proposed to make the differential 35 cents.

Q. Now, let me interpolate there, do the carriers propose to maintain the present differentials as between the groups in Illinois other than Springfield and Southern Illinois, that is, as between Southern Illinois and Belleville, Southern Illinois and DuQuoin, Southern Illinois and Centralia?

A. Yes, sir, they do.

Q. The carriers on a previous occasion attempted to adjust the rates from the Illinois mines and the Indiana mines to this destination territory, under I&S Docket No. 4368. Are you familiar with that proceeding?

A. Yes, I am. In that proceeding the carriers published rates effective June 1, 1937, from the Illinois, Indiana and Western Kentucky Groups to these destinations. The rates were suspended and hearings were held, in which this Association actively participated.

Q. Were the differentials proposed by the carriers at [fol. 1734] that time the same as they are now proposing in the proceeding here under consideration?

A. No, the differentials between the Indiana groups on the one hand, and the Illinois groups on the other, involved in that adjustment, are not the same as here proposed. In the I&S 4368 proceeding, the carriers proposed increased rates to Northern Illinois and Beloit and to most of the destination territory the restoration of the 30 cent differential Brazil-Clinton under Southern Illinois, and also rates from the Linton-Sullivan Group based 10 cents over Brazil-Clinton and 20 cents under Southern Illinois. However, the carriers did not propose to restore the standard differentials between the Illinois mines on the one hand, and the

Princeton-Ayrshire and Boonville Groups on the other, and between the Brazil-Clinton Groups on the one hand and the Princeton-Ayrshire and Boonville Groups on the other, but proposed to further disrupt those differentials.

The rates were suspended by both the Interstate Commerce Commission and the Illinois Commerce Commission and a joint hearing was held. The Interstate Commerce Commission in their decision, reported in 232 ICC 151, found justified the proposed rates from the Illinois groups and from the Brazil-Clinton and Linton-Sullivan Groups but found not justified the proposed rates from the Princeton-Ayrshire and Boonville Groups in so far as they exceeded the rates from the Brazil-Clinton and Linton-Sullivan [fol. 1735] Groups and the Illinois Groups by more than their standard differentials.

* * * * * * * *

[fol. 1736] The Witness: Following the decision of the Interstate Commerce Commission, the Illinois Commerce Commission issued its decision finding not justified the proposed increases and ordered the suspended schedules withdrawn. The carriers then filed a 13th Section petition with the Interstate Commerce Commission alleging that the existing Illinois intrastate rates were in violation of Section 13 of the Interstate Commerce Act and asked that the Commission prescribe rates for the transportation of bituminous coal moving in intrastate commerce within the State of Illinois on a basis not lower than proposed by the carriers on interstate traffic. They also petitioned for reopening and rehearing in the I&S 4368 Case. The Interstate Commerce Commission granted both petitions and assigned them for hearing; however, just prior to the hearing, the carriers withdrew the Section 13 petition and also their petition for rehearing in the I&S 4368 Case. They then petitioned the Interstate Commerce Commission and secured permission to withdraw the proposed increased rates from the Indiana mines and at the same time withdrew the proposed increased intrastate rates. In the publication in-[fol. 1737] volved in this proceeding the carriers are not proposing the restoration of the standard differential of 30 cents Brazil-Clinton under Southern Illinois or the standard differential between the other Indiana groups and the Illinois groups.

(Exhibit No. 51, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. Have you prepared an exhibit which shows the rates from the Southern Illinois and Indiana Groups as proposed in I&S 4368, as in effect at the present time, and as now proposed, as well as the differential relationships resulting from such rates?

A. Yes, and it has been marked Exhibit No. 52. On page 1 of this exhibit is shown the rates from the Southern Illinois Group and the four Indiana Groups in effect, prior to the decision of the Commission in I&S 4368, as proposed by the carriers and as approved by the Interstate Commerce Commission in I&S Docket 4368, at the present time and as now proposed. In the I&S Docket 4368 adjustment, the Commission approved the rates proposed by the carriers from the Southern Illinois, Brazil-Clinton and Linton-Sullivan Groups. They did not, however, approve the rates proposed by the carriers from the Princeton-Ayrshire and Boonville Groups, but did approve rates from those groups on the basis of their standard differential over the other Indiana Groups, and between the Princeton-Ayrshire and Boonville Groups and the Illinois Groups. In their decision [fol. 1738] in that case the Commission found that from the Princeton-Ayrshire Group and the Boonville Group any greater differentials than the standard differentials would result in rates which would be unduly prejudicial to shippers and producers in the Princeton-Ayrshire and Boonville Groups and unduly preferential of their competitors in the other Indiana and Illinois Groups.

On page 2 of this exhibit is shown the differentials Indiana groups under Southern Illinois in effect prior to the decision of the Commission in I&S Docket No. 4368, as proposed and as approved in I&S 4368, at the present time and as now proposed.

From the Brazil-Clinton Group the carriers proposed and the Commission approved in the I&S 4368 adjustment, the standard differential of 30 cents Brazil-Clinton under Southern Illinois to all of the representative destinations except Dixon, Ladd and Rochelle. The carriers, however, are now proposing the 30 cent differential only from mines on the C. M. St. P. & P. Railroad to Beloit, Byron, Freeport, Lanark and Rockford, but from all other mines they are proposing a differential Brazil-Clinton under Southern Illinois ranging from 13 to 28 cents.

By Mr. Wilkinson:

Q. Going back to where you say, from all other mines they are proposing a differential Brazil-Clinton under Southern Illinois ranging from 13 to 28 cents, in the proposal of the carriers does the Illinois Central Railroad propose rates from its mines in the Linton-Sullivan District [fol. 1739] to Rockford for direct shipment via the Illinois Central the same level as the rates proposed from mines on the Chicago, Milwaukee, St. Paul and Pacific to Rockford via the St. Paul's line direct?

A. Yes, sir, they do.

Q. So to that extent this statement that all other mines and so on, is incorrect, in so far as Rockford is concerned?

A. That is right. The exception should be from the Illinois Central mines in the Linton-Sullivan group to Rockford and Freeport.

Exam. Trezise: Mr. Scott, I worked on that exhibit. This column, I&S 4368, proposed and approved, in your Exhibit 52, and I seemed to work that out, that that was a rate that was approved without the increases that have subsequently been made, and that your other column over here, the one proposed in the present proceeding here, is a rate with the increases on it, is that right?

The Witness: That is right, sir. The I&S 4368, as I recall it, at that time when that proceeding was before the Commission, there were no increases in effect, as I recall it, or at least if there were, they were of a temporary nature.

Exam. Trezise: You just copied the rates out of the report?

The Witness: Definitely, the rates are quoted from the decision.

Exam. Trezise: And, of course, what is proposed in the present proceeding is the rates with possibly such increases?

[fol. 1740] The Witness: Yes, sir.

Exam. Trezise: And I couldn't figure out just exactly whether that was true in all instances or not.

The Witness: Yes, the rates shown under the heading I&S 4368, proposed and approved, are the rates that were in effect at that time and which did not include the permanent Ex Parte 115 reopened increases. The rates shown as present and proposed do include the permanent Ex Parte

115 reopened increases, because those have since been made a permanent part of the rate structure.

Exam. Trezise: Thank you.

Mr. Wilkinson: Now, will you proceed, Mr. Scott.

The Witness: From the Linton-Sullivan Group the carriers proposed and the Commission approved, in the I&S Docket 4368 adjustment, the standard differential Linton-Sullivan under Southern Illinois of 20 cents except to Dixon, Ladd and Rochelle. However, the carriers are now proposing this 20 cent differential only from mines on the Chicago, Milwaukee, St. Paul & Pacific Railroad to Beloit, Byron and Lanark and from mines on the Chicago, Milwaukee, St. Paul & Pacific and Illinois Central Railroads to Freeport and Rockford. From all other mines they are proposing a differential ranging from 8 to 18 cents. From the Princeton-Ayrshire Group, the carriers in the I&S 4368 adjustment proposed a differential under Southern Illinois ranging from rates on the same basis as Southern Illinois [fol. 1741] to 8 cents under Southern Illinois. The Commission did not approve the basis proposed by the carriers, but approved rates based on their standard differential of 7 cents over Linton-Sullivan to all destinations and their standard differential of 13 cents under Southern Illinois to all destinations except Dixon, Ladd and Rochelle.

The carriers are now proposing a differential ranging from the standard differential of 13 cents under Southern Illinois to 1 cent over Southern Illinois. From the Boonville Group the carriers proposed in I&S 4368 a differential under Southern Illinois ranging from 5 cents under to 3 cents over the Southern Illinois rates. The Commission did not approve the differentials proposed by the carriers but did approve rates based on the standard differential of 3 cents over the Princeton-Ayrshire Group to all destinations and the standard differential of 10 cents Boonville under Southern Illinois to all destinations except Dixon, Ladd, and Rochelle. The carriers are now proposing a differential ranging from 13 cents under Southern Illinois to 4 cents over Southern Illinois.

Mr. Cardy: That is from Boonville?

The Witness: Yes, sir. The exceptions made at Dixon, Ladd, and Rochelle are due to the fact that from the Brazil-Clinton Group and the Linton-Sullivan Group the carriers, under the I&S 4368 Adjustment, did not propose the restoration of the standard differential of 30 cents Brazil-

[fol. 1742] Clinton under Southern Illinois, but proposed a differential of 20 cents to Dixon and Ladd and 25 cents to Rochelle.

(Exhibit No. 52, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. Do you have a statement showing the difference in distances via the short tariff routes each Indiana Group is under Southern Illinois to each representative destination, and to a composite of all destinations, showing the present and proposed rate differentials?

A. Yes, and it has been marked Exhibit No. 53. This is a statement showing the difference in distance each Indiana group is under Southern Illinois to the representative destinations and to a composite of all representative destinations, and the present and proposed rate differentials. Particular attention is directed to the composite of all destinations at the bottom of the page, where it is shown that for a difference in distance Brazil-Clinton under Southern Illinois of 145.8 miles, the present differential is 22 cents and it is now proposed to narrow this differential to 18 cents. From the Linton-Sullivan Group for a difference in distance of 83.6 miles under Southern Illinois the present differential is 15 cents and the proposed differential 11 cents under Southern Illinois. From the Princeton-Ayrshire Group for a difference in distance of 16.4 miles under Southern Illinois, the present differential is 7 cents and the proposed differential 4 cents under Southern Illinois, [fol. 1743]. From the Boonville District for a difference in distance Boonville over Southern Illinois of 23.4 miles, the present differential is Boonville 4 cents under Southern Illinois.

Q. Can you give us what those differences are to just the Northern Illinois destinations, exclusive of Beloit?

A. Yes. To the Northern Illinois destinations only——

Mr. Biaett: Hasn't he given us that once before?

Mr. Wilkinson: Can you correct that on the exhibit, Mr. Scott?

The Witness: Yes, sir.

Mr. Wilkinson: All right, if you will give us it, so we can put it in at the bottom of the exhibit.

The Witness: To the Northern Illinois destinations, not including Beloit, the difference in distances, Indiana Groups over or under Southern Illinois, is as follows: starting with column 2, and going across, minus 114.0; under column 3 it is minus 83.1; minus 15.4; plus 24.7; minus 21; minus 18; minus 15; minus 11; minus 6; under column 11, minus 5; minus 4; the last column is minus 2.

Now, the figures indicated on there to those Northern Illinois points are the difference in distance and in the present differential to the Northern Illinois points, not including Beloit. It will be noted that both the present and the pro- [fol. 1744] posed differentials are contrary to the standard adjustment that prevails to the balance of Northern Illinois, Wisconsin, Southeastern Minnesota and Northeastern Iowa.

(Exhibit No. 53, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. For comparative purposes and to indicate the level of rates, will you introduce exhibits showing the percentage various rates involved in this proceeding are of the various scales of rates prescribed by the Interstate Commerce Commission, and do you have an exhibit reproducing these scales?

A. Yes, and it has been marked Exhibit No. 54. This is a statement showing the scales prescribed by the Interstate Commerce Commission in ICC Docket No. 23922, reported in 185 ICC 225 and 190 ICC 743, the scale prescribed by the Commission in ICC Docket No. 26558, the Midland Electric Case, and related cases, reported in 232 ICC 5, and the Holmes and Hallowell Scale, reported in 69 ICC 11. The three scales reproduced in this exhibit are the basic scale as increased under Ex Parte No. 115, reopened, of 3 cents, 5 cents with a maximum of 10 cents, and 3 cents, 5 cents, 10 cents with a maximum of 15 cents.

Q. What were the territories involved in those cases?

A. The 23922 Scale was prescribed for application from the Indiana Groups to destinations in the eastern-central [fol. 1745] portion of the State of Illinois. The 26558 scale was prescribed from the Illinois Groups to destinations in the state of Iowa. The Holmes and Hallowell scale was prescribed for application from the Head-of-the-Lakes to destinations in Minnesota, North Dakota and South Dakota.

(Exhibit No. 54, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. Have you prepared an exhibit showing the level of the Southern Illinois Group rates as compared with a composite of the Indiana groups to all of the representative destinations?

A. Yes, and it has been marked Exhibit No. 55. This is a statement showing the average distance via the short tariff routes and the average rate from the Southern Illinois Group and a composite of the Indiana Groups to the representative destinations, and to a composite of the representative destinations, including Beloit. To Rockford, the distance via the short tariff routes from the Southern Illinois Groups, is 368.8 miles and from a composite of all the Indiana Groups the short tariff route distance is 317.2 miles, or 51.6 miles greater distance from Southern Illinois than from the Indiana Groups; however, the present rate from Southern Ilinois to Rockford is 84 per cent of the 23922 scale and the present rate from the Indiana Groups [fol. 1746] Southern Illinois is 90 per cent and the proposed rate from the Indiana Groups 91 per cent. Under the Holmes and Hallowell scale the present rate from Southern Illinois is 62 per cent and from the Indiana Groups 64 per cent, while the proposed rate is 67 per cent from Southern Illinois and 69 per cent from the Indiana Groups. Under the 26558 scale the present Southern Illinois rate to Rockford is 68 per cent and from the Indiana Groups 69 per cent while the proposed rate from Southern Illinois is 73 per cent and from the Indiana Groups 75 per cent.

To a composite of all of the representative destinations, including Beloit, Wisconsin, the average distance from the Indiana groups is 62.5 miles less than the average short tariff route distance from the Southern Illinois Group. Under the 23922 scale the present rates from the Southern Illinois Group and from a composite of the Indiana groups is 85 per cent of that scale, while the proposed rate from Southern Illinois is 87 per cent and from a composite of the Indiana Groups 89 per cent. Under the Holmes and Hallowell scale to a composite of all representative destinations the present rate from Southern Illinois is 62 per cent of that scale while from the Indiana Groups the present rate is 65 per cent. The proposed rates from Southern Illinois are 63 per cent of that scale while the proposed rates from the Indiana Groups is 67 per cent. The same situation is true under the 26558 scale. The present rate from South-

ern Illinois being 69 per cent and from the Indiana Groups [fol. 1747] 70 per cent, while the proposed rates are 71 per cent of the scale for Southern Illinois and 73 per cent from the Indiana groups.

(Exhibit No. 55, Witness Scott, received in evidence.)

Exam. Trezise: Would you say there that the H. & H. scale is the scale prescribed in that 69 ICC 11 plus 15 cents?

The Witness: Yes, sir, it is.

Exam. Trezise: Thank you.

By Mr. Wilkinson:

Q. Now, Mr. Scott, can you give us or read into your Exhibit No. 55 these various distances, rates and percentages as between Indiana, on the one hand, and Southern Illinois, on the other, to the destinations in Northern Illinois exclusive of Beloit?

A. Yes, sir, I can. Under the 23922 scale, column 2, mileage from Southern Illinois group, and then across the board it is as follows: 371.2; 210; 215; 249; 84; 86; 310; 197; 205; 233; 85; and 88. Under the H. & H. scale: 371.2; 210; 215; 344; 61; 62; column 8, 310.0; column 9, 197; column 10, 205; column 11, 302; under column 12 is 65; and 68. Under the last scale, 26558: 371.2; 210; 215; 307; 68; 70; 310.0; 197; 205; 285; 69; and 72.

By Mr. Wilkinson:

Q. Southern Illinois being the base group in Illinois and Brazil-Clinton being the base group in Indiana, have you prepared an exhibit showing the level of the present and [fol. 1748] proposed rates from those groups?

A. Yes, and it has been marked Exhibit No. 56. This is a statement showing the present and proposed rates from the Southern Illinois Group, the base group in Illinois, as compared with the Brazil-Clinton Group, the base group in Indiana, to each representative destination and to a composite of the representative destinations, and the percentages such rates are of the 23922 scale, the H&H scale and the 26558 scale.

To Rockford, as an example, the Southern Illinois present rate is 84 per cent of the 23922 scale as compared with the Brazil-Clinton Group rate which is 83 per cent from the Milwaukee mines and 91 per cent from all other mines. The

rate proposed from Southern Illinois to Rockford is 90 per cent of that scale while the rate proposed from Brazil-Clinton is 90 per cent from Milwaukee mines and 98 per cent from all other mines. The present and proposed rates from the Milwaukee mines in the Brazil-Clinton Group are on the standard differential of 30 cents under Southern Illinois and the percentage of the 23922 scale is the same. The mines other than the Chicago, Milwaukee, St. Paul & Pacific in the Brazil-Clinton Group are not on their standard differential of 30 cents under Southern Illinois and consequently are a considerably greater percentage of the scale than are the rates from Southern Illinois.

Under the H&H scale the same situation exists to Rockford. Under the 26558 scale the present and proposed rates [fol. 1749] from the Brazil-Clinton Group are on a considerably higher level than are the rates from the Southern Illinois Group and this is true even from mines in the Brazil-Clinton Group on the Chicago, Milwaukee, St. Paul & Pacific Railroad which are on their standard differential of 30 cents under Southern Illinois.

To a composite of the representative destinations, including Beloit, Wisconsin, the proposed rates from Southern Illinois are 87 per cent of the 23922 scale and the proposed rates from the Brazil-Clinton Group is 92 per cent. Under the H&H scale to a composite of the representative destinations, the proposed rates are 63 per cent from Southern Illinois and 73 per cent from Brazil-Clinton. Under the 26558 scale the proposed rates from Southern Illinois are 71 per cent and Brazil-Clinton 80 percent.

(Exhibit No. 56, Witness Scott, received in evidence.)

Exam. Trezise: Mr. Scott, when you keep emphasizing Southern Illinois, the base group, does that mean because you call it that kind of a name they have got to pay a little bit more to ship their coal than if you didn't call it the base group?

The Witness: No, sir.

Exam. Trezise: You wouldn't mean that by emphasizing the base group?

The Witness: No, sir. The only reason I emphasized the [fol. 1750] base group as Southern Illinois is because it has been recognized for many years as the base group to destinations in this territory; and in Indiana, Brazil-Clinton has been recognized as the base group for many years. There-

fore, I am comparing the base groups to show the level of the rates.

Exam. Trezise: You wouldn't say just because you call it that kind of a name that relatively it ought to pay more money for like distance than the Boonville, Princeton-Ayrshire coal shippers?

The Witness: Well, the Boonville, Princeton-Ayrshire distance—if you take Boonville into consideration alone, that is something else. You must remember Boonville and Princeton-Ayrshire rates are not related to Illinois only. They are also related to the two groups, Linton-Sullivan, north of them, and they must have differentials which will permit them to ship their coal into this territory in competition with those groups.

Exam. Trezise: Then you are saying it would give them a little lower rate because you call them a base group over there?

The Witness: I would say when you compare the Southern Illinois and the Brazil-Clinton groups, you are comparing two base groups. Therefore those levels are comparable. But when you compare the Princeton-Ayrshire with two north groups in Indiana, they are related by differentials to them, to permit them to ship the coal, for the same reason [fol. 1751] you did for the most part make coal rates between Illinois, for all Illinois destinations, coal rates based on mileage.

Exam. Trezise: Than you do or you do not state by your statement that your emphasis of Southern Illinois being the base group means that they ought to pay a little more for shipping their coal than if you didn't call it the base group?

The Witness: I said the base group has no effect on it as far as them paying any more.

Exam. Trezise: I am asking that because that question has come up so often, and by virtue of that, I should say more or less gymnastics of figures and names—you just discussed an exhibit a while ago, your Exhibit 53, and you go from Southern Illinois to Lanark, with a difference in distance Indiana group under or over Southern Illinois, you have there say 50 miles greater distance, I assume, from Boonville, and over here you have a rate that is 10 cents less for a greater mileage of 50 miles; and does that

come about by virtue of calling the Southern Illinois group a base group?

The Witness: No, sir. That comes about by virtue of the fact that the Boonville group must compete with the other groups in the state in selling its coal and is entitled to a differential that will give them an opportunity to ship their coal.

I want to point this out in that connection, the rates from the Illinois group are not made with relation to mileages. [fol. 1752] They are made with relation to differentials. When I use Southern Illinois as the base group, I would say that this would justify it, that the carriers, for example, in complying with the rates in the Midland Electric Case, had Fulton County as the base group, as prescribed by the Commission; yet when it came time to make rates from Indiana, they did with the Indiana rates whatever was done with the rates from Southern Illinois, increased so much or decreased so much. The same was true when they got these increases under Ex Parte 115. Whatever increases or decreases were made from Southern Illinois were made from Indiana. That is true of the 10 cent reduction and all the others. Therefore, I would say the carriers over a period of many years, by using Southern Illinois to decide the rates from all other groups, have used Southern Illinois as the base group. They themselves have established the fact it is a base group.

By Mr. Wilkinson:

Q. And the Commission itself has acquiesced in that?

A. That is right.

Exam. Trezise: We will adjourn until two o'clock.

(At 12:45 p. m., recess taken until 2:00 p. m.)

[fol. 1753] Afternoon Session

The hearing was resumed pursuant to recess.

2:00 P. M.

Exam Trezise: All right, gentlemen. Proceed.

HAROLD V. SCOTT resumed:

Direct examination (Continued).

By Mr. Wilkinson:

Q. Have you prepared a statement showing the average present and proposed rates from a composite of the groups in Indiana as compared with a composite of groups in Illinois?

A. Yes, and it has been marked Exhibit No. 57. This is a statement showing the distance via the short tariff routes from a composite of the Indiana Groups as compared with a composite of the Illinois Groups to each representative destination and to a composite of the representative destinations, showing the average present and proposed rates and the per cent such rates are of the 23922 scale, the H&H scale, and the 26558 scale.

To each individual representative point, it will be noted that the average present rate from a composite of the Illinois Groups is, in each and every instance, a lower percentage of the three scales than are the present rates from a composite of the Indiana groups. Likewise, the average proposed rates from a composite of the Illinois groups to each destination is a lower percentage of each of the three [fol. 1754] scales than is the proposed rate from a composite of the Indiana groups. To most of the representative destinations the average proposed rate from a composite of the Illinois groups is a lower percentage of the various scales than are the average present rates from a composite of the Indiana groups.

To Rockford, for example, the average proposed rate from the Illinois groups is 82 per cent of the 23922 scale, while the average present rate from a composite of the Indiana groups is 85 per cent of that scale. Under the H&H scale, the average proposed rate from a composite of the Illinois groups to Rockford is 64 per cent of that scale, while the average present rate to Rockford from a com-

posite of the Indiana groups is 64 per cent. Under the 26558 scale, the average proposed rate from a composite of the Illinois groups to Rockford is 67 per cent of that scale, while the average present rate from a composite of the Indiana groups is 69 per cent of that scale.

To a composite of all the representative destinations, the exhibit shows that the average present rate from the Illinois groups is 79 per cent of the 23922 scale while the average present rate from Indiana groups is 85 per cent. The average proposed rate from a composite of the Illinois groups is 80 per cent and from the Indiana groups 89 per cent. Particular attention is directed to the proposed rate from the Illinois groups, which is 80 per cent of the 23922 scale, while the average present rate from the Indiana groups [fol. 1755] is 85 per cent. Under the H&H scale, the average present rate to a composite of all representative destinations from the Illinois groups is 60 per cent and the average proposed rate is 61 per cent. From the Indiana groups the average present rate is 65 per cent and the average proposed rate is 67 per cent. The average proposed rate from the Illinois groups is on a lower level than the average present rate from the Indiana groups.

Measuring the rates by the 26558 scale, from the Illinois groups the average present rate is 65 per cent and the average proposed rate 66 per cent, while from the Indiana groups the average present rate is 70 per cent, and the average proposed rate 73 per cent. Again it will be noted that the average proposed rate from the Illinois group under this scale is 66 per cent, while the average present rate from the Indiana groups is 70 per cent.

(Exhibit No. 57, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. Now, Mr. Scott, those percentage figures that you have given for the composite include Beloit, Wisconsin?

A. Yes, sir.

Q. Can you give us the figures for the totals and averages under these three scales excluding Beloit and applying only to the Illinois destinations involved?

A. Yes, sir, I can.

[fol. 1756] Q. Will you do so, please.

A. Under the 23922 scale, under column 2, the figures to the representative Northern Illinois destinations as a whole,

without Beloit, are as follows: 289.1; 175; 180; 225; 78; and 80; 310.0; 197; 205; 233; 85 and 88. Under the H & H scale, starting under column 2, the figures are: 289.1; 175; 180; 289; 61; 62; 310.0; 197; 205; 302; 65 and 68. Under the 26558 scale, the figures are: 289.1; 175; 180; 274; 64; 66; 310.0; 197; 205; 285; 69; 72.

Mr. McElroy: Right at that point, Mr. Scott, these last exhibits you have introduced or talked about, they speak about the composite of Illinois groups. Have you explained some place in your previous testimony what the composite of the Illinois groups consists of, the individual groups? What individual groups?

The Witness: All groups in the state of Illinois?

Mr. McElroy: Did you use different groups in Illinois in your presentation?

The Witness: Yes, each and every group in the state.

Mr. McElroy: Well, do your groups differ any from the groups used by the Illinois coal operating witnesses?

The Witness: No, sir.

Exam. Trezise: They are the same groups?

The Witness: Yes, sir.

Mr. McElroy: They are the same groups?

[fol. 1757] The Witness: Yes, sir.

Mr. McElroy: And your percentages are different because the Illinois distances were different?

The Witness: I would say they are different because of the method in figuring the—well, the distances would be one. The different average rates would be another, than the Illinois witnesses used.

Mr. McElroy: What I have in mind is this, you are together on your theory, as I understand it, this is a good way to measure the relative levels between the two sets of rates, the Illinois intrastate rates, on the one hand, and the interstate rates on the other?

The Witness: The Illinois intrastate rates from the Illinois groups and the Indiana intrastate rates from Indiana groups as a whole.

Mr. Stadell: Interstate, you mean, from Indiana, instead of intrastate? You said intrastate.

The Witness: Interstate, yes.

By Mr. Wilkinson:

Q. Mr. Scott, in your Exhibit No. 56 which you discussed just prior to the noon recess, you have shown in the exhibit the totals and averages including Beloit and you have read those into the record. Now, can you give us for Exhibit No. 56 the totals and averages for the Illinois destinations, exclusive of Beloit?

A. Yes, sir, I have those figures.

[fol. 1758] Q. Will you please read them in so that we can put them into the exhibits.

Mr. McElroy: Is that Exhibit No. 56, you are talking about?

Mr. Wilkinson: Yes.

The Witness: To the representative northern Illinois destinations as a whole, that is not including Beloit, Wisconsin, the figures under the 23922 scale are as follows: 371.2; 210; 215; 249; 84; 86; 257.2; 189; 197; 217; 87 and 91. Page 2, under the H & H scale, the figures are: 371.2; 210; 215; 344; 61; 62; 257; 189; 197; 271; 69; and 72. Under the 26558 scale the figures are: 317.2; 210; 215; 307; 68; 70; 257.2; 189; 197; 250; 75; and 78.

By Mr. Wilkinson:

Q. Have you prepared an exhibit showing the earnings accruing under the present and proposed rates from the Illinois and Indiana groups?

A. Yes, and it has been marked Exhibit No. 58; this is a statement of the distances via the short tariff routes from a composite of the Illinois groups and a composite of the Indiana groups to each representative destination and to all representative destinations, showing the average present and proposed rates and the earnings thereunder.

At the bottom of the page is shown the earnings to a composite of the representative destinations.

Q. Including Beloit?

[fol. 1759] A. Including Beloit.

Mr. Morgan: Are you speaking now of the earnings of the railroad?

The Witness: Sir?

Mr. Morgan: When you mention earnings, is that the earnings of the railroad?

The Witness: Yes, sir.

Mr. Morgan: To what extent did you prepare this earning?

The Witness: Well, I took the distance in which the traffic is hauled, the average short tariff route distance, and I took the present rate, and by that I arrive at the resultant earnings the railroad gets under the present rates, and the same for the proposed rates.

Exam. Trezise: These are the revenues they get for hauling the coal?

The Witness: Yes, sir.

Exam. Trezise: The revenues they get.

Mr. Morgan: It is the same thing I have in mind. It is money. Who supplied you with the figures on behalf of the railroads?

The Witness: They were in their own tariffs.

Mr. Wilkinson: I think that there is a misunderstanding on the part of counsel as to what these figures purport to show. They are not showing the net earnings. They are [fol. 1760] showing what would accrue if traffic moved under these rates and via these routes.

Mr. Morgan: From what source did you get the amount of traffic which was moved in each instance, that is, on each railroad?

The Witness: There is nothing on here to indicate the amount of traffic. It is based on one ton.

Mr. McElroy: Those are not the earnings of the railroads. It is merely what the railroad would get per ton per mile.

The Witness: That is right.

Mr. Morgan: If they happened to haul any coal.

Mr. McElroy: It is the rate divided by the distance, isn't it?

The Witness: That is right.

Mr. Wilkinson: That is it. Will you proceed, Mr. Scott.

The Witness: Under columns 5 and 6 the earnings from the Illinois groups are 6.07 mills under the present rates and 6.21 mills under the proposed rates. Under columns 12 and 13 the earnings from the Indiana groups are 6.39 mills under the present rates and 6.64 mills under the proposed rates. Under columns 7 and 8 the car mile earnings from the Illinois groups are 30.35 cents under the present rates and 31.05 cents under the proposed rates, while from the Indiana groups the car mile earnings are 31.95 cents under the present rates and 33.20 cents under the proposed rates.

[fol. 1761] Exam. Trezise: And their car mile earnings are based on the the minimum weights?

Mr. Wilkinson: Based on a 50 ton car.

The Witness: Yes, sir.

Exam. Trezise: 50 tons a car?

The Witness: Yes, sir, as indicated on the exhibit.

Exam. Trezise: Oh, yes, that is right, it is on the exhibit. Thank you.

The Witness: It will be noted that the proposed rates from the Illinois groups reflect earnings lower than do the present rates from the Indiana groups.

[fol. 1762] By Mr. Wilkinson:

Q. Now, do you have the figures of the earnings per ton mile and per car mile to the Illinois destinations exclusive of Beloit?

A. Yes, I have.

Q. Will you give us those, please,

A. To the representative Illinois destinations shown on this exhibit, that is, to the Illinois points, and not including Beloit, Wisconsin, the figures are as follows: 289.1; 175; 180; 6.05; 6.22; 30.25; 31.10; 310.0; 197; 205; 6.36; 6.61; 31.80 and 33.05.

(Exhibit No. 58, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. Do you have an exhibit showing the earnings from the Southern Illinois and a composite of the Indiana groups to each representative destination and to a composite of the representative destinations?

A. Yes, and it has been marked Exhibit No. 59. This is a statement showing the distances via the short tariff routes from Southern Illinois and a composite of the Indiana groups to each representative destination and to a composite of the representative destinations including Beloit, also the present and proposed rates and the resultant revenue per ton mile and per car mile.

To each of the representative destinations shown, except Dixon, the per ton mile earnings under the present rates from the Indiana groups exceed those from the [fol. 1763] Southern Illinois group and likewise the earnings from the Indiana groups under the proposed rates

exceed those from the Southern Illinois group. The same thing is true under the car mile earnings.

On the last line of this exhibit is shown the earnings to the representative destinations as a whole, consisting of Northern Illinois points and Beloit, Wisconsin. Again it will be noted that under both the present and proposed rates, the earnings from the Indiana groups greatly exceed those from the Southern Illinois group. The proposed rates from Southern Illinois reflect earnings of 5.8 mills per ton mile, while from a composite of the Indiana groups the present rates reflect earnings of 6.39 mills per ton mile. The same situation exists under the per car mile earnings.

(Exhibit No. 59, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. Again, can you give us the figures for the Illinois destinations, exclusive of Beloit, for the composite of the total?

A. Yes. These figures are as follows, to the representative destinations in Northern Illinois shown in this exhibit, and therefore, not including Beloit, the figures are as follows: 371.2; 210; 215; 5.66; 5.79; 28.30; 28.95; 310.0; 197; 205; 6.36; 6.61; 31.80; 33.05.

Mr. Zoll: Mr. Scott, on your Exhibit 58, what was the figure that you read in column 6?

[fol. 1764] The Witness: 6.22.

Mr. Zoll: Can that be right? It is a minor point. I thought I would just ask about it though.

The Witness: I think so.

Mr. Bather: Your total average is 6.21. It would be less, wouldn't it, excluding Beloit?

The Witness: You have got a shorter distance and your rate is one cent less. We will figure that and see.

Mr. Zoll: You don't need to do it now.

By Mr. Wilkinson:

Q. Do you have an exhibit which shows the comparison of the earnings from Southern Illinois and the Brazil-Clinton groups to these destinations we have been discussing?

A. Yes, and it has been marked Exhibit No. 60. This is a statement showing the average distance from Southern Illinois, the base group in Illinois, and Brazil-Clinton, the

base group in Indiana, to each representative destination and to a composite of the representative destinations showing the revenue per ton-mile and per car-mile under the present and proposed rates.

Q. And that includes Beloit in that?

A. Yes, sir.

Q. All right, proceed.

A. To each individual destination the ton-mile earnings and the per car-mile earnings from the Brazil-Clinton group [fol. 1765] are greatly in excess of the earnings from the Southern Illinois group. For example, to Rockford the earnings from Southern Illinois under the present rate reflects earnings of 5.69 mills, while from the Brazil-Clinton group the present rate from mines on the Chicago, Milwaukee, St. Paul & Pacific Railroad which is on the standard basis of differentials, reflects earnings of 7.09 mills and from other mines in that group which are not on their standard differentials under Southern Illinois, the present rate reflects earnings of 7.76 mills per ton-mile. Further, the earnings under the proposed rates from the Southern Illinois group are in all cases considerably lower than the earnings under the present rates from the Brazil-Clinton group.

At the bottom of the page is shown the earnings to a composite of the representative destinations, in Northern Illinois and Beloit, Wisconsin, as a whole. The present rates from Southern Illinois reflect earnings of 5.66 mills per ton-mile and from Brazil-Clinton 7.36 mills per ton-mile, while the proposed rates reflect earnings of 5.80 mills per ton-mile from Southern Illinois and 7.71 mills per ton mile from Brazil-Clinton. The earnings from Southern Illinois under the proposed rates are considerably less than the earnings under the present rates from the Brazil-Clinton group. The same situations exists under the per car-mile earnings.

(Exhibit No. 60, Witness Scott, received in evidence.)

. . . . . .

[fol. 1766] Mr. McElroy: At least, Mr. Scott, you prob-
[fol. 1767] ably would get the same result if you compared Southern Illinois with the Springfield group in Illinois, would you not?

The Witness: That I don't know.

Mr. McElroy: Since the Springfield group and the Brazil-Clinton group are on practically the same level of rates.

Mr. Wilkinson: I might say for the record, Mr. McElroy, that we in Indiana recognize that ordinarily earnings per ton-mile and per car-mile diminish as distance increases.

By Mr. Wilkinson:

Q. Mr. Scoft, can you give us the figures for these earnings and distances for the composite of the destinations in Northern Illinois, exclusive of Beloit?

A. Yes. To the Northern Illinois destinations, exclusive of Beloit, as shown on Exhibit 60, the figures are as follows: 371.2; 210; 215; 5.66; 5.79; 28.30; 28.85; 257.2; 189; 197; 7.35; 7.66; 36.75; 38.30.

Q. What carriers serve both mines in Indiana and in the Southern Illinois groups?

A. The C. & E. I. and New York Central Railroads serve mines in the Brazil-Clinton, Linton-Sullivan, and the Princeton-Ayrshire groups in Indiana and mines in the Southern Illinois group.

Q. Have you prepared a statement making a comparison of the distances and rates from the mines served by these railroads in those groups?

A. Yes, and it has been marked Exhibit No. 61. This is a statement showing the short tariff route distances from the [fols. 1768-1769] four Indiana groups and the Southern Illinois group on the C. & E. I. and New York Central Railroads, the present and proposed rates from those groups and the per cent such rates are of the various scales. This is shown to each representative destination and, on the last page of the exhibit, to a composite of all destinations, which are the representative destinations in Northern Illinois and does not include Beloit. To Byron, the first point shown on page 1, from mines on the C. & E. I. Railroad, the present rates from the Indiana groups are: 91 per cent of the 23922 scale from the Brazil-Clinton group, 90 per cent from the Linton-Sullivan group, and 84 per cent from the Princeton-Ayrshire group, while from the Southern Illinois group they are 82 per cent. The proposed rates from the Indiana groups are 96 per cent of the 23922 scale from the Brazil-Clinton group, 94 per cent from the Linton-Sullivan group and 88 per cent from the Princeton-Ayrshire group, while

from the Southern Illinois group the proposed rates are 86 per cent of the 23922 scale.

Under the H&H scale, the present rates from the Indiana groups range from 63 to 72 per cent, while the Southern Illinois present rate is 61 per cent of that scale. The proposed rates under the H&H scale from the Indiana groups range from 66 to 75 per cent——

. . . . . .

[fol. 1770] The Witness: The proposed rates under the H&H scale from the Indiana groups range from 66 to 75 per cent, while the proposed rates from Southern Illinois are 64 per cent. Under the 26558 scale, the present rates from the Indiana groups range from 68 to 76 per cent, while from Southern Illinois the present rate is 66 per cent. The proposed rates from the Indiana groups range from 72 to 80 per cent of the 26558 scale, while from Southern Illinois the proposed rate is 69 per cent of that scale.

Exam. Trezise: Let us take a bit of a recess here.

(A recess was taken.)

Exam. Trezise: All right, gentlemen, let us proceed.

By Mr. Wilkinson:

Q. Will you proceed with your statement, Mr. Scott.

A. The same situation exists from mines on the New York Central Railroad as from mines on the C. & E. I. Railroad. On page 4 of this exhibit it is shown that to a composite of all destinations the present rates from the Indiana groups are much higher than are the level of the rates from Southern Illinois.

[fol. 1771] Q. Then that last panel is a composite of all the preceding specific points?

A. That is true, Northern Illinois points.

Q. Showing the same type of information to the composite of all of them?

A. Yes, sir.

(Exhibit No. 61, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. Have you prepared a statement showing a comparison of the earnings from the mines on the C. & E. I. and New

York Central Railroads in the Indiana groups and the Southern Illinois group?

A. Yes, and it has been marked Exhibit No. 62. This is a statement showing the comparison of the per ton-mile and per car-mile earnings under the present and proposed rates from the Brazil-Clinton, Linton-Sullivan and Princeton-Ayrshire groups and the Southern Illinois group on the C. & E. I. and New York Central Railroads, to each representative destination, and on the last page to a composite of all representative destinations.

On the last page of this exhibit is a composite of all the representative destinations in Northern Illinois and it is shown that the present rates from the mines on the C. & E. I. Railroad reflect ton-mile earnings in Indiana higher than those from Southern Illinois.

[fol. 1772] Q. What does it show with respect to the New York Central Railroad?

A. The same situation is true with respect to the car-mile earnings under the present and proposed rates from mines on the New York Central Railroad.

(Exhibit No. 62, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. Have you prepared a statement showing the longest and shortest haul via the short tariff routes from the Southern Illinois, Springfield, and the four Indiana groups to each representative destination?

A. Yes, and it has been marked Exhibit No. 63. This is a statement showing the longest haul and the shortest haul via the short tariff routes from the Springfield, and Southern Illinois groups, and from the four Indiana groups to each representative destination.

Exam. Trezise: Does that mean that the shortest haul is depicting the nearest point in the group to the destination and the farthest point in the group from the destination?

The Witness: Yes, sir, that would be it. It is the point that has the point of origin but the shortest haul, one point of origin in the group with the shortest haul and one point of origin in the group with the longest haul, via the short tariff routes.

Mr. McElroy: What is it intended to prove, since all coal [fol. 1773] rates are generally on a group basis?

The Witness: Well, it shows, Mr. McElroy, for example, that from the Springfield group to Beloit, Wisconsin, the shortest tariff route distance is 191.9 miles and the longest is 328.6 miles. The difference in distance between the longest and the shortest of the short tariff routes from the Springfield group is 136.7 miles. Now, going down to the first Indiana group, which is Brazil-Clinton, it shows that the shortest haul via the short tariff route is 241.1 miles, while the longest is 301.1 miles, a difference in distance between the shortest and the longest short tariff route of only 60.2 miles.

Mr. McElroy: You didn't answer my question yet, what it is intended to prove.

The Witness: It proves that the difference in distance between the short tariff route and the long tariff route in the Springfield group is much greater than is that same difference in distance from the Brazil-Clinton group.

Mr. Wilkinson: I might add to that, Mr. McElroy, that one of the purposes of this exhibit is to illustrate the small compact size of the Indiana groups as compared to the Illinois groups, and that this talk of difference in distance of a few miles as between Princeton and Southern Illinois is more than swallowed up in the differences in the distance between Southern Illinois or the Springfield group, for example.

[fol. 1774] Exam. Trezise: Well, that is not any contention there that the Boonville group should be smaller or that the Springfield group should be smaller?

Mr. Wilkinson: We are not contending anything. We are merely showing the fact and we will argue it on brief.

Exam. Trezise: What significance the extremes may have in determining what the rate ought to be?

Mr. Wilkinson: That is right.

(Exhibit No. 63, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. The testimony and exhibits which you have offered up to this time have dealt generally with the rates to Northern Illinois destinations and Beloit, Wisconsin. Have you prepared exhibits dealing specifically with the proposed increases from the Indiana mines to Beloit and the resultant disruption of the differentials between the Illinois and

Indiana groups and between the Indiana groups themselves to Beloit?

A. Yes, I have.

Q. Will you introduce such exhibits?

A. My first exhibit, which has been marked Exhibit No. 64, is a statement showing the present and proposed rates on bituminous coal from mines in the Illinois, Indiana and Western Kentucky groups to Rockford, Illinois, and Beloit, Wisconsin; also the amount of increase in cents per ton and [fol. 1775] the present and proposed differentials the other groups are under or over the Southern Illinois group.

We have shown the rates to Rockford in order to show how the carriers arrived at the proposed rates to Beloit. From each and every group the proposed rate to Beloit is arrived at by adding 15 cents to the proposed Rockford rate. This is the method the carriers elected to apply in complying with the order of the Commission in ICC Docket No. 25419 and Related Cases, decided March 3, 1942, 251 ICC 181. In that proceeding the Commission found that the rates on bituminous coals from mines in Illinois, Indiana and Western Kentucky to Beloit were unduly prejudicial to Beloit and unduly preferential to Rockford to the extent that they exceeded the rates from the same origins to Rockford by more than 15 cents per ton.

The present rates from the Illinois groups to Beloit exceed those to Rockford by 30 cents per ton.

From Indiana the present rates from mines on the Chicago, Milwaukee, St. Paul & Pacific Railroad in the Brazil-Clinton district and Linton-Sullivan district to Beloit exceed those to Rockford by 30 cents per ton and from the other Indiana mines the rates to Beloit exceed those to Rockford by 13 cents from the Brazil-Clinton district and 18 cents from mines in the Linton-Sullivan, Princeton-Ayrshire and Boonville districts.

Under the method the carriers propose to use in complying with the order of the Commission in the Beloit case, [fol. 1776] there will be no change in the rates from the Illinois groups, except Atkinson will be reduced 14 cents per ton, or from the Western Kentucky group, as shown under column 10 of Exhibit No. 64, and no increase in the rates from mines in Indiana on the Chicago, Milwaukee, St. Paul & Pacific Railroad.

Mr. Cardy: Mr. Scott, before you get over that subject, you said in each and every case it only increased the rates 15 cents a ton. Isn't it a fact in Northern Illinois, at Rockford, they increased it 20 cents a ton as shown in your exhibit?

The Witness: That is correct. However, from other mines in Indiana it results in an increase of 17 cents from the Brazil-Clinton group, 12 cents from the Linton-Sullivan groups, and Princeton-Ayrshire group. As shown under column 10, there is no increase in rates from mines on the Southern Railway in the Princeton-Ayrshire and Boonville groups or from mines on the A. W. & W. Railway via the Southern Railway in the Princeton-Ayrshire group. While the carriers have stated that these increases from the Indiana mines are in compliance with the order of the Commission in Docket No. 25419, there is nothing in that order which authorizes any increase in the rates from the Indiana mines, nor is there anything which authorizes or approves the disruption of existing origin relationships which are of long standing.

By Mr. Wilkinson:

Q. How are the differentials between the Illinois groups [fol. 1777] affected by the proposed adjustment and between the Illinois mines on the one hand, and the Indiana mines on the other?

A. As shown under columns 11 and 12 of Exhibit No. 64, with the exception of Atkinson, the differential relationship between Southern Illinois and the other Illinois groups, is the same under the proposed rates as is in effect at the present time. However, from mines in Indiana other than on the C. M. St. P. & P. Railroad, the Southern Railway and the A. W. & W. Railway, the proposed rates would result in a complete disruption of the differentials between the Illinois groups on the one hand, and the Indiana groups on the other.

Is it proposed to disrupt the differential relationship between the Southern Illinois and Western Kentucky groups?

A. No, the present differential Western Kentucky over Southern Illinois is 35 cents per ton and the carriers are proposing to continue that differential.

Q. How did the carriers comply with the order of the Commission in the original Beloit Case, reported in 195 ICC 365?

A. In their decision in that case the Commission found that the rates assailed from mines in Illinois, Indiana, and Western Kentucky were unduly prejudicial to Beloit and unduly preferential to Rockford to the extent that they exceeded the contemporaneous rates from the same origins to Rockford by more than 25 cents per ton. In complying [fol. 1778] with the decision in that case, the carriers first determined the rate from the Southern Illinois group, the base group, and then determined the rates from the other groups by deducting from, or adding to, the Southern Illinois rate, the standard differential. The only exception to this formula were the rates from the Fulton County-Peoria groups.

(Exhibit No. 64, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. Do you have an exhibit showing this situation?

A. Yes, and it has been marked Exhibit No. 65. This is a statement showing the rates from origin groups in Illinois, Indiana and Western Kentucky to Beloit. Under column 2 is shown the rates to Beloit in effect on October 26, 1933, prior to the first order of the Commission in Docket No. 25419, and under column 3 is shown the rates published in compliance with the order in that case effective October 27, 1933. Under column 4 is shown the rates in effect to Rockford on those dates.

The rate from Southern Illinois was reduced to 25 cents over the rates to Rockford and the rates from the other groups, except the Fulton-Peoria group, established on the basis of their standard differential under Southern Illinois.

The Brazil-Clinton rate was continued 30 cents under Southern Illinois, the Linton-Sullivan rate 20 cents under Southern Illinois, the Princeton-Ayrshire rate 13 cents [fol. 1779] under Southern Illinois, and the Boonville rate 10 cents under Southern Illinois.

Q. Is Beloit the only point affected by the adjustment which the carriers are now proposing to that point?

A. No, it also affects many intermediate points at which the same situation as proposed to Beloit still exists.

(Exhibit No. 65, Witness Scott, received in evidence.)

The Witness: My next exhibit, which has been marked Exhibit No. 66, is a statement showing the present and proposed rates from the Southern Illinois and Springfield groups and the Indiana groups to Beloit and affected Illinois points, and the amount of increase in cents per ton that is proposed from each group. Referring to the stations on the Chicago, Milwaukee, St. Paul & Pacific Railroad, Rockton to Dakota, Illinois, it will be noted under column 4 that it is proposed to increase these rates from Southern Illinois 8 cents per ton and from Springfield, as shown under column 7, 8 cents per ton. However, from the Brazil-Clinton and Linton-Sullivan groups, except the mines on the C. M. St. P. & P. Railroad, it is proposed to increase these rates 15 cents per ton. From the Princeton-Ayrshire and Boonville groups it is proposed to increase these rates 10 cents or 15 cents per ton. In other words, there is no uniformity in the amount of increase or resulting rates which are to be made to these affected points.

[fol. 1780] (Exhibit No. 66, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. Have you a statement which shows the differentials, Indiana versus Southern Illinois to these affected intermediate points?

A. Yes, and it has been marked Exhibit No. 67. This is a statement showing the present and proposed rates from Southern Illinois and the Indiana groups to Beloit and affected points; also the present and proposed differential Indiana under Southern Illinois. Under column 12, which I particularly would like to call to your attention, it is shown that the present differential Brazil-Clinton under Southern Illinois is uniformly 30 cents per ton while under column 13 the proposed differential to stations on the C. M. St. P. & P. Railroad is 30 cents per ton from C. M. St. P. & P. mines but from other mines 13 cents to Beloit and 23 cents to other destinations.

The same is true from the other Indiana groups.

Mr. McElroy: The same is true from the other Indiana groups, is that not correct?

The Witness: I think I better elaborate on that just a little bit.

Mr. McElroy: In other words, your differential Brazil-Clinton under Southern Illinois is 30 cents.

The Witness: Yes. I am talking about the differential Indiana, on the one hand, and Southern Illinois, on the other.

[fol. 1781] Exam. Trezise: Go ahead.

By Mr. Wilkinson:

Q. Well, the exhibit shows on its face the differentials presently existing to these destinations and the differentials that would exist under the proposed rates from each of the Indiana groups, does it not?

A. That is right.

Q. Under Southern Illinois?

A. That is right.

Mr. McElroy: It shows the extent to which it is proposed to disturb it?

The Witness: That is right.

By Mr. Wilkinson:

Q. And it shows that from all of the other groups there are varying differentials to these destinations?

A. That is true.

(Exhibit No. 67, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. Do the rates which the carriers are proposing to Beloit disrupt the differential relationship between the Indiana groups themselves?

A. Yes, by referring to my Exhibit No. 64, it will be seen under column 10 that the proposed rates to Beloit result in no increases from mines on the C. M. St. P. & P. Railroad in the Brazil-Clinton group, but that from all other mines in that group an increase of 17 cents is proposed. From mines in the Linton-Sullivan group on the C. M. St. P. & P. Railroad, no increase is proposed but an increase of 12 cents is proposed from mines in that group on other railroads. From the Princeton-Ayrshire group no increase is [fol. 1782] proposed from mines on the Southern Railway or the A. W. & W. Railway via the Southern, while from mines in that group on other railroads an increase of 12

cents per ton is proposed. From the Boonville district no increase is proposed in the present rates.

This results in a complete disruption of the differential relationship between the Indiana mines themselves and my next exhibit, which has been marked No. 68 portrays this situation.

This exhibit shows Brazil-Clinton to be the base group and from the Linton-Sullivan group the present differential is uniformly 10 cents per ton over the Brazil-Clinton group. The Princeton-Ayrshire group is uniformly 17 cents over the Brazil-Clinton group and the Boonville group is 20 cents over the Brazil-Clinton group. These differentials have been in effect for many years.

However, under the proposed rates the differentials are greatly disrupted, even to the extent of breaking up the rates applicable from mines within the same group. At the present time all mines in the Brazil-Clinton group take the same rate of $2.10 but under the carriers' proposal the rates from mines on the C. M. St. P. & P. Railroad would remain $2.10 but the rates from mines on other railroads in that group would be increased to $2.27. From the Linton-Sullivan group the present differential of 10 cents over Brazil-Clinton is proposed to be continued from mines on the C. M. St. P. & P. Railroad, but from mines on other rail- [fol. 1783] roads it is proposed to increase the differential over the lowest Brazil-Clinton rate from 10 cents to 22 cents. As between carriers other than the C. M. St. P. & P. Railroad serving the Brazil-Clinton and Linton-Sullivan groups the differential is narrowed to 5 cents. From the Princeton-Ayrshire group it is proposed to continue in effect the present differential of 17 cents over the lowest rate from the Brazil-Clinton group from mines on the Southern Railway and from mines on the A. W. & W. via the Southern, while from mines on other railroads in the Princeton-Ayrshire group it is proposed to increase the differential from 17 cents to 29 cents. From the Boonville group it is proposed to continue in effect the present differential of 20 cents Boonville over the lowest rate from the Brazil-Clinton group. Another instance of the peculiarity of the carriers' proposed adjustment is that the proposed rate from mines in the Brazil-Clinton group located on railroads other than the C. M. St. P. & P. Railroad is $2.27, while from mines on the C. M. St. P. & P. Railroad in the Linton-Sullivan group, ordinarily a higher rated group than the Brazil-

Clinton group, the rate will be $2.20. The same situation exists from the Princeton-Ayrshire and Boonville groups where under the proposed adjustment, the Boonville rate will be $2.30 per ton but from the Princeton-Ayrshire group, ordinarily a lower rated group, the rate from some of the mines will be $2.39 per ton.

[fol. 1784] It can be seen that the proposed rates to Beloit disrupt the differentials between the Indiana groups and also disrupt the parity in rates which has existed from all mines in each individual group.

(Exhibit No. 68, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. You stated that the Illinois Central published a rate from the Linton-Sullivan group to Rockford on a parity with the rates from the Illinois mines to Rockford?

A. Yes, sir.

Q. Does the Illinois Central propose to increase the rates from its mines from Linton-Sullivan to Beloit to 15 cents over its rate from the same mines to Rockford or does it propose a rate to Beloit on a parity with the other lines serving Linton-Sullivan, except the Milwaukee?

A. It proposes rates to Beloit on a parity with other railroads.

Q. So that as far as the Illinois Central is concerned, it is not in strict compliance under any interpretation with the order of the Interstate Commerce Commission regarding the rates via its line direct to Beloit?

A. That is correct.

Q. Have you prepared a statement showing the difference in distance, Southern Illinois versus the Indiana groups and the present and proposed rate differentials to Beloit?

[fol. 1785] A. Yes, and it has been marked Exhibit No. 69. This is a statement showing the distance via the short tariff routes to Beloit from the Indiana groups and from the Southern Illinois group, the difference in distance the Indiana groups are under Southern Illinois, and the present and proposed rates; also the present and proposed rate differentials, Indiana groups under Southern Illinois:

The Brazil-Clinton group is the base group in Indiana and, as shown on this exhibit, is 136.3 miles under the distance from Southern Illinois. For this difference in dis-

tance the present differential Brazil-Clinton under Southern Illinois is 30 cents but under the proposed rates the differential will be 30 cents only from mines on the C. M. St. P. & P. Railroad, while from mines on other railroads in that group it is proposed to reduce the differential from 30 cents to 13 cents. From the Linton-Sullivan district for a difference in distance under Southern Illinois of 102.4 miles, the present differential is 20 cents and under the proposed adjustment this differential will be reduced to 8 cents except from mines on the C. M. St. P. & P. Railroad.

From the Princeton-Ayrshire group for a difference in distance of 28.4 miles it is proposed to reduce the present differential under Southern Illinois from 13 cents to 1 cent except from origins on the Southern Railway and A. W. & W. Railway. No change is proposed in the differential of 10 [fol. 1786] cents, Boonville under Southern Illinois.

Q. Now, when you say from mines on the A. W. & W. Railway, you mean from mines on that road via the Southern?

A. Yes, sir.

Q. If they move off the A. W. & W. via the New York Central, a different situation would exist?

A. That is true.

(Exhibit No. 69, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. Have you prepared a statement showing the difference in distance Springfield under Southern Illinois and the present and proposed rate differentials to Beloit?

A. Yes, and it has been marked Exhibit No. 70. This is a statement showing the distance via the short tariff route to Beloit from the Southern Illinois and Springfield groups, the difference in distance Springfield under Southern Illinois, the present and proposed rates, and the present and proposed rate differential.

The difference in distance, Springfield under Southern Illinois, is 121.8 miles for which the present differential, Springfield under Southern Illinois, is 30 cents, and the proposed differential is likewise 30 cents. Referring to my Exhibit No. 69 it will be seen that the difference in distance, Brazil-Clinton under Southern Illinois, is 136.3 miles for which the present differential is 30 cents and for which the [fol. 1787] proposed differential is 13 cents except from

C. M. St. P. & P. mines. The difference in distance Brazil-Clinton under Southern Illinois, is 14.5 miles greater than the difference in distance Springfield under Southern Illinois, yet it is proposed to continue the present Springfield differential of 30 cents under Southern Illinois but reduce the present Brazil-Clinton differential from 30 cents to 13 cents.

(Exhibit No. 70, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. You have previously stated that both the C. & E. I. and the New York Central Railroads serve mines in the Brazil-Clinton group and the Southern Illinois group. Have you prepared a statement making a comparison of the distances and rates from the mines served by those railroads in these two groups to Beloit?

A. Yes, and it has been marked Exhibit No. 71. This is a statement showing the distances and the present and proposed rates from the Brazil-Clinton group, which is the base group in Indiana, the Linton-Sullivan and Princeton-Ayrshire groups, and from the Southern Illinois group, which is the base group in Illinois, to Beloit; there is also shown the present and proposed rates, the per cent such rates are of the various scales and the earnings under such rates.

From the C. & E. I. mines it will be noted that the level of the rates from the groups in Indiana are on a nigher basis [fol. 1788] than are those from Southern Illinois. The same situation exists in comparing the rates from Brazil-Clinton and Southern Illinois group on the Illinois Central.

(Exhibit No. 71, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. How do the rates and differentials as now proposed by the carriers to Beloit compare with the rates and differentials as proposed and approved in the I&S 4368 adjustment?

A. The rates and differentials from the Indiana groups as proposed in this proceeding are not the same as approved by the Commission in their decision in I&S Docket No. 4368 reported in 232 ICC 151, nor are they the same as in effect at that time.

If you will refer to my exhibit marked No. 52, this is a statement showing the rates prior to the I&S 4368 ad-

justment, as proposed by the carriers and as approved by the Commission under I&S 4368, the present rates and proposed rates from Southern Illinois and the Indiana groups and the differentials under such rates, Indiana groups versus Southern Illinois. Page 1 of this exhibit shows the rates from Southern Illinois, Brazil-Clinton, Linton-Sullivan, Princeton-Ayrshire and Boonville Groups to Beloit, Wisconsin, in effect prior to the I&S 4368 adjustment, as proposed by the carriers and as approved by the Commission under I&S 4368, in effect at the present time and as [fol. 1789] now proposed by the carriers.

From Southern Illinois the rate to Beloit as proposed and as approved under I&S 4368, as now in effect and as now proposed is $2.40. From Brazil-Clinton, the rate under I&S 4368 as proposed, as approved, and as now in effect is $2.10 but the carriers are now proposing a continuation of the $2.10 rate only from mines on the C. M. St. P. & P. and from other mines an increase in the rate to $2.27.

From the Linton-Sullivan group the rate as proposed under I&S 4368 and as approved by the Commission in that proceeding, and as now in effect, is $2.20. However, the carriers are now proposing a continuation only from mines on the C. M. St. P. & P. Railroad, while from other mines they are proposing to increase the rate to $2.32.

From the Princeton-Ayrshire group the carriers proposed under I&S 4368 to increase the rate to $2.40 but the Commission approved an increase in the same amount as in other groups, resulting in a rate of $2.27 which is the rate in effect at the present time; however, the carriers are now proposing to continue this $2.27 rate only from mines on the Southern Railroad and mines on the A. W. & W. Railroad via the Southern while from all other mines they are proposing a rate of $2.39. From the Boonville district under the I&S 4368 adjustment the carriers proposed a rate of $2.43 which was a greater increase in cents per ton than from the Illinois mines or from other Indiana [fol. 1790] mines but the Commission approved a rate of $2.30 which is the rate in effect today and which is also the rate as now proposed by the carriers.

As indicated by this exhibit, the Commission in their decision in I&S 4368 approved the action of the carriers in continuing the standard differentials under Southern Illinois from the Brazil-Clinton and Linton-Sullivan groups, but did not approve the proposed disruption of the standard

differential between Southern Illinois on the one hand and the Princeton-Ayrshire and Boonville groups on the other. They did however, approve rates from those groups based on their standard differential of 13 cents under Southern Illinois from the Princeton-Ayrshire group and 10 cents under Southern Illinois from the Boonville group, also based the standard differential between those two Indiana groups and the Brazil-Clinton and Linton-Sullivan groups.

The differentials approved by the Interstate Commerce Commission in their decision in I&S Docket 4368 are the standard differentials applying not only to Beloit but to the balance of the state of Wisconsin except to points along the Lake Michigan shore, to Southeastern Minnesota, and to Northeastern Iowa, as shown on the differential map which has been marked Exhibit No. 48.

Q. Are the carriers proposing to disrupt the differential relationship between the Illinois groups to Beloit?

[fol. 1791] A. No, they are proposing no change in the present rates from the Illinois groups to Beloit and consequently no change in the differential in those groups except from Atkinson. From Atkinson they are proposing a reduction of 14 cents which puts that origin on the Fulton-Peoria basis.

Mr. Cardy: Mr. Scott, that statement doesn't apply to the short haul rates? In other words, that is a general statement, taking in Fulton-Peoria and the group south, but not so far as the short haul rates are concerned, is that generally true?

The Witness: Just one moment, Mr. Cardy, and I will answer that.

Mr. Cardy: Oh, this is to Beloit, I see.

By Mr. Wilkinson:

Q. It is your understanding that your statement applies to Northern Illinois as well as to the other Illinois groups?

A. Yes, sir.

Q. Can you say how the level of the present and proposed rates from the Illinois groups compares with the present and proposed rates from the Indiana groups to Beloit?

A. Yes, by referring to my Exhibit No. 36. This exhibit shows a comparison of the level of the present and proposed

rates from Southern Illinois, the base group in Illinois, and from Brazil-Clinton, the base group in Indiana to Beloit.

Under column 6 and 7 on page 1 of this exhibit, the pres-
[fol. 1792] ent and proposed rates from Southern Illinois to Beloit are 92 per cent of the 23922 scale, while from the Brazil-Clinton group the present rate to Beloit, as shown under Column 12, is 95 per cent of that scale and under Column 13 the proposed rate is 95 per cent from the C. M. St. P. & P. Railroad mines and 102 *per cent from other* mines in that group.

It shows the same comparisons on page 2 under the H&H scale and the 26558 scale or the Midland scale.

Q. The per cents under the various scales are somewhat different, but the Indiana rates are a higher percentage of that scale than the Illinois rates?

A. That is right.

Q. How do the level of the present and proposed rates from the Illinois groups compare with those from the Indiana groups?

A. Refer to my exhibit marked No. 57. This exhibit shows a comparison of the level of the rates from a composite of the Illinois groups as compared with a composite of the Indiana groups to Beloit.

Under the 23922 scale the present and proposed rates from the Illinois groups to Beloit, as shown under columns 6 and 7, is 84 per cent of that scale. From a composite of the Indiana groups, as shown under columns 12 and 13, the present rate is 90 per cent and the proposed rate 92 per cent of that scale. Under the Holmes and Hallowell scale and the 26558 or Midland scale, the percentages indicate that the rates from Indiana are on a higher level than are the
[fol. 1793] rates from a composite of the Illinois groups.

Q. How do the earnings under the present and proposed rates from the Illinois groups compare with those from the Indiana groups to Beloit?

A. Referring to my exhibit marked No. 58, this exhibit shows that to Beloit from a composite of the Illinois groups the average present rate, as shown under column 7, reflects per ton-mile earnings of 6.65 mills and the average proposed rate 6.61 mills. The earnings from the Indiana groups to Beloit are higher, as shown under Columns 12 and 13.

Q. How do the earnings from Southern Illinois compare with the earnings from Brazil-Clinton?

A. Referring to my exhibit which has been marked No. 60, this exhibit shows that to Beloit, the present and proposed rates from Southern Illinois reflect ton-mile earnings of 6.09 mills and the present rate from Brazil-Clinton reflects earnings of 7.78 mills. The proposed rate from Brazil-Clinton reflects ton-mile earnings of 7.78 mills from the C. M. St. P. & P. mines and 8.41 mills from other mines. Again it will be noted that the earnings from the Southern Illinois group under the present rate is considerably lower than the earnings under the present and proposed rates from Brazil-Clinton.

The same situation is reflected in the car-mile earnings.

Q. The testimony and exhibits that you have presented [fol. 1794] are intended to prove, are they not, that the rates and differentials as now in effect and as now proposed to the Northern Illinois destinations and as now proposed to Beloit are not proper. What is the contention of the Indiana operators as to what rates would be proper?

A. It is our contention that the rates from Indiana to destinations in Northern Illinois should be on the basis of their standard differential under Southern Illinois which was in effect prior to the 1930-1932 disruption. To Beloit, it is our contention that the rates should continue in effect the differential relationship with Southern Illinois, which relationship has been in effect for many years.

Q. Do you have an exhibit showing what these rates would be?

A. Yes, and it has been marked Exhibit No. 72. This is a statement showing the rates that would obtain from the Indiana groups to the representative destinations in Northern Illinois and Beloit, Wisconsin, and to a composite of such representative destinations based on the standard differentials between the Indiana groups and the Illinois groups.

These rates are arrived at in the following manner: The rates proposed from Southern Illinois to these representative destinations have been taken as the base rate from the Illinois group. From the base group in Indiana, the Brazil-Clinton groups, the rates shown on this exhibit have been made on their standard differential of 30 cents under [fol. 1795] Southern Illinois. From the Linton-Sullivan group, the rates are based on their standard differentials of 10 cents over Brazil-Clinton. From the Princeton-Ayrshire group the rates are based on their standard differen-

tials of 17 cents over Brazil-Clinton. From the Boonville group the rates are based on their standard differentials of 20 cents over Brazil-Clinton.

Under column 6 is shown a composite rate from the Indiana groups to each representative destination and to a composite of all representative destinations.

Q. The averages which you have shown at the bottom of that page are the averages to the Illinois destinations and Beloit?

A. Yes, sir.

Q. Can you give us the averages just to the Illinois destinations, exclusive of Beloit?

A. Yes. The averages to the Illinois destinations only, that is not including Beloit, Wisconsin,——

Mr. Stadell: Is this page 1 of Exhibit 72?

The Witness: Yes. They are as follows: under column 2, 185; continuing across, 195, 202, 205, 197.

By Mr. Wilkinson:

Q. All right, will you proceed, Mr. Scott.

A. On page 2 of this exhibit is shown a comparison of the average proposed rates from the Illinois groups with the average rate, based on standard differentials, from the Indiana groups, and the per cent such rates are of the various scales. It will be noted that to each representative [fol. 1796] destination the Indiana rate is on a higher level than the Illinois rate except to Dixon, Illinois. To the representative destinations as a whole the average proposed rate from the Illinois groups is $1.81 and the average rate from the Indiana groups based on their standard differentials is $1.99.

Under the 23922 scale the Illinois rate is 80 per cent of that scale and the Indiana rate is 85 per cent of that scale. Under the H&H scale the Illinois rate is 61 per cent and the Indiana rate 65 per cent of that scale. Under the 26558 scale the Illinois rate is 66 per cent and the Indiana rate 70 per cent of that scale.

Q. Now, I understand that that is a composite of Indiana rates, based on Indiana rates being made Brazil-Clinton 30 cents under Southern Illinois and the other Indiana groups taking what you have termed their standard differentials over Brazil-Clinton?

A. Yes, sir.

Q. And the composite of the Illinois rates are the presently proposed rates involved here?

A. Yes, sir. The figures on page 2 of this exhibit are to a composite of the Northern Illinois and Beloit destinations, and I would like to give the figures to a composite of the Northern Illinois destinations only.

Q. All right, will you do so.

A. Under the first panel, 23922 scale, the figures across are as follows: 289.1; 180; 80; 310.0; 197; 85. The second [fol. 1797] panel, 289.1; 180; 62; 310.0; 197; 65. Under the third panel and the last panel, 289.1; 180; 66; 310.0; 197; and 69.

The Indiana operators believe that its evidence shows that should the Commission find the rates from the Illinois groups to this destination territory to be justified, it should prescribe rates from the Indiana groups based on their standard differentials under Southern Illinois as shown on page 1 of Exhibit No. 72.

However, no matter what rates the Commission finds to be proper to these destinations, it is our position that the rates from the Indiana groups should be on their standard differential with relation to the rates from Illinois, and also on their standard differential relationship with each other.

(Exhibit No. 72, Witness Scott, received in evidence.)

The Witness: May we be off the record? We would like to identify the two exhibits which are now to be introduced.

Exam. Trezise: All right.

The Witness: I have them right here.

(Discussion outside the record.)

The Witness: The exhibit consisting of four pages, marked RS-195 will be Exhibit No. 73, and the next exhibit identified as S-193R will be Exhibit No. 74.

(Exhibits Nos. 73 and 74, Witness Scott, marked for identification.)

[fol. 1798] By Mr. Wilkinson:

Q. Mr. Scott, the present and proposed rates from the Illinois and Indiana groups to the representative destinations, and the short tariff route distances, are shown in

carriers' Witness Robertson's Exhibits Nos. 3 and 4. Have you made a study of those exhibits?

A. Yes, I have.

Q. Have you prepared an exhibit based on the carriers' mileages and rates to show the relative levels of the rates from Illinois and Indiana to the carriers' representative destinations?

A. Yes, and it has been marked Exhibit No. 73. This is a statement based on the carriers' mileages and rates on Exhibits Nos. 3 and 4, showing a composite of the Illinois groups compared with a composite of the Indiana groups to the carriers' representative destinations as a whole; the exhibit shows the average present and proposed rates and the per cent such rates are of the H&H scale, the 23922 scale, and the 26558 scale. Pages 2, 3, and 4 of this exhibit contain the supporting data for the figures shown on page 1.

Q. While this exhibit speaks for itself, is there any particular comment you care to make about it?

A. I would like to direct attention to columns 9 and 10, page 1, of this exhibit. At the bottom of the page, under these columns, it is shown that to a composite of the carriers' representative Northern Illinois destinations the average present rate from all the Illinois groups is 1.67 [fol. 1799] when including all rates to the Northern Illinois group and $1.73 from all Illinois groups when using the Wilmington rate as representative of Northern Illinois, and from the Indiana groups the average present rate is $1.98.

The reason I have used one figure from all Illinois groups based on all origins in the Northern Illinois group and another figure from all Illinois groups based on using Wilmington as representative of Northern Illinois, is because carriers' Witness Nelson in his Exhibit No. 11 stated that inasmuch as the majority of the tonnage in the Northern Illinois group originated at Wilmington, that the carriers considered Wilmington as representative of that group. I have, however, shown figures based on using all origins in the Illinois groups, as that would seem to be the proper method of comparing the level of the rates; that is, when comparing the level of all rates and mileages from the Illinois groups with all rates and mileages from the Indiana groups.

The average proposed rate from the Illinois groups is $1.74 and $1.81 while from the Indiana groups the average

proposed rate is $2.07. Particular attention is directed to the fact that the average proposed rate from the Illinois groups is considerably lower than is the average present rate from the Indiana groups.

Under column 12 it is shown that the present rates from the Illinois groups are 58 per cent of the H&H scale when [fol. 1800] using all origins and rates in the Illinois groups and 60 per cent of the scale from all Illinois groups when using Wilmington only as a representative of the Northern Illinois group, whole from the Indiana groups the present rates are 65 per cent of that scale.

Under column 13 it will be noted that the proposed rates from the Illinois groups are 61 per cent and 63 per cent of the H&H scale while from the Indiana groups the proposed rates are 68 per cent of that scale. Here again is the significant fact that the proposed rates from the Illinois groups are on a much lower level than are the present rates from the Indiana groups.

The same situation is true under columns 15 and 16 with respect to the level of the rates under the 23922 scale.

The same situation is also true under columns 18 and 19 showing the level of the present and proposed rates under the scale prescribed in Docket 26558, the Midland Electric Case.

(Exhibit No. 73, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. Have you prepared a statement showing what the average rate would be from the Indiana groups to the representative destinations used by the carriers based on their standard differentials with the proposed rates from the Illinois groups and a comparison of those Indiana rates with those proposed from Illinois?

A. Yes, and it has been marked Exhibit No. 74. This is [fol. 1801] a statement based on the carriers' mileages and rates to the carriers' representative destinations, showing the composite distance via the short tariff routes from the Indiana groups and the Illinois groups, the average proposed rates from the Illinois groups and the average Indiana rate based on their standard differential relationship with the Illinois rates; also the per cent such rates are of the 23922, the H&H and the 26558 scales. The rates and mileages from the Illinois groups and the mileages from

the Indiana groups are based on the carriers' mileages and rates as shown in the Witness Robertson's Exhibits Nos. 3 and 4.

Q. What does this exhibit show with respect to the rates from the Indiana groups if they were based on their standard differentials with the Illinois groups?

A. If the rates from the Indiana groups were based on their standard differential relationship with the Illinois groups, the resultant average rate from the Indiana groups would be $1.98 as compared with an average proposed rate from the Illinois groups of $1.74.

The average rate from Indiana would be 85 per cent of the 23922 scale as compared with 79 per cent of that scale from the Illinois groups. Under the H&H scale the average rate from Indiana would be 65 per cent as compared with 61 per cent from the Illinois groups and under the 26558 scale the average rate from Indiana would be 69 per cent [fol. 1802] as compared with 66 per cent from the Illinois groups. In other words, in each instance the level of the rates from Indiana based on their standard differential relationship with the Illinois groups would be higher than the level of the proposed rates from the Illinois groups.

(Exhibit No. 74, Witness Scott, received in evidence.)

By Mr. Wilkinson:

Q. Mr. Scott, did you hear Mr. Rozene's evidence given here yesterday and the day before, Saturday?

A. Yes, sir.

Q. Do you recall the fact that he used in making comparisons of certain of his exhibits mileages via what he termed the shortest tariff routes?

A. Yes, sir.

Q. Now, from your exhibits you have used mileages via the so-called short tariff routes, have you not?

A. Yes, sir.

Q. Will you tell us why you used mileages and average distances via short tariff routes rather than via the so-called shortest tariff route method?

A. Because in my opinion the mileages figured via the short tariff routes are those which should be used to measure the minimum service which the carriers offer in connection with their rates.

Exam. Trezise: Do you mean that it is more representa-
[fol. 1803] tive of the service that the carriers perform under those rates?

The Witness: Yes, sir.

By Mr. Wilkinson:

Q. The use of the average of the short tariff routes uses the minimum service that the carriers as a whole hold themselves out to perform for the mines in Illinois and Indiana, do they not?

A. Yes, sir.

Q. Whereas the use of the shortest tariff route distances does not take into consideration services offered by carriers from certain of the joint mines?

A. That is correct.

Q. Now, you heard reference made to the possible use of the so-called short circuit routes or class rate method of figuring distances. Do you think that that method of figuring distances should be used in the determination of the issues in a proceeding such as this?

A. No, I do not, because it in no way can be used to measure the minimum service which the carriers offer to perform for the rates which they charge.

Q. The carriers, in other words, do not hold themselves out and do not perform service of transportation over routes arrived at by use of that formula?

A. That is correct.

Q. Do you recall Witness Rozene's exhibit No. 30?

[fol. 1804] A. Yes, sir.

Q. Do you believe that the use of routes constructed in the manner of his blue and red lines on the pages of that exhibit afford a proper basis for the decision of this case, so far as computing distances are concerned?

A. I definitely don't believe that they do.

Q. For the same reasons that it does not represent the service which the carriers perform or hold themselves out to perform?

A. That is exactly true.

Q. Do you advocate using the distances from the nearest point in any of the groups to the destinations or any destination as representative of the entire group?

A. No, for the same reason, it does not represent the service which the carriers hold themselves out to perform.

Q. And in like manner, you would not recommend using the farthest distant point in any group, for the reason that it represents more than the average service?

A. That is correct.

Mr. Wilkinson: That is all, Mr. Scott.

Exam. Trezise: I think we have imposed on Mr. Scott about long enough today. So I think we will adjourn until ten o'clock tomorrow morning.

(At 4:30 p. m., September 28, 1943, adjourned until 10:00 a. m., September 29, 1943.)

[fol. 1805]

Morrison Hotel,
Chicago, Illinois,
September 29, 1943.

The hearing resumed pursuant to adjournment, at 10:00 o'clock a. m.

R. N. Trezise, Examiner.

F. B. McElroy, Illinois Commerce Commission.

Appearances:

As heretofore noted.

PROCEEDINGS

Exam. Trezise: All right, gentlemen, proceed.

Mr. Bather: Mr. Examiner, before we proceed, may we go off the record?

Exam. Trezise: Off the record.

(Discussion outside the record.)

Exam. Trezise: Mr. Wilkinson.

Mr. Wilkinson: The witness is available for cross-examination.

Mr. Biaett: I have a few questions of Mr. Scott, if nobody else wants to go ahead. It makes no difference to me.

Exam. Trezise: Go ahead, Mr. Biaett.

HAROLD V. SCOTT, resumed.

Cross-examination.

By Mr. Biaett:

Q. Mr. Scott, will you refer to page 10 of your Exhibit No. 41, please.

A. Yes, sir.

[fol. 1806] Q. In that exhibit, from Brazil-Clinton to Rockford, you show a rate of $1.80 via the Milwaukee Railroad, a distance of 237.1 miles. Now, is that average distance the average from all of the mines in the group or the average distance from the mines served by the Milwaukee?

A. The 237.1 is the average distance from the tariff origin points on the Milwaukee Railroad.

Q. Now, the Milwaukee has a rate which is 17 cents lower than the rates which apply via the other lines?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Now, will you please turn back to page 5 of your exhibit, which is Freeport. There from Brazil-Clinton to Freeport you show a rate of $1.97 in column 6.

A. Yes. I realize that is a typographical error.

Q. There is a lower rate via the Milwaukee from Brazil-Clinton to Freeport than the rate which you show?

A. Yes. Is it proper for me at this time to ask that that exhibit be corrected to show a rate of $1.80? It will not influence any other exhibit.

Mr. Bather: Excuse me.

By Mr. Bather:

Q. It is not via that route, Mr. Scott.

A. Oh, that is correct; that is true. That is right. This exhibit shows a short tariff route distance from each group [fol. 1807] and the rate applying in connection with that short tariff route distance. This particular exhibit, Exhibit No. 3, the purpose is to show, as stated on the title page, the distances via the short tariff routes from these groups to these representative destinations.

By Exam. Trezise:

Q. That is Exhibit 41?

A. Exhibit 41, sir; page 5. And the 265.4 average distance is the short tariff route distance from the mines on the C. M. St. P. & P. to Freeport, Illinois, for which there is a rate of $1.97 as shown on this exhibit.

There is, however, a rate of $1.80 via the C. M. St. P. & P. Railroad from its Brazil-Clinton Group to Freeport, and that rate applies via its line direct. The distance via the Milwaukee line direct is greater than the distance shown in this exhibit.

By Mr. Biaett:

Q. Now, referring to Linton-Sullivan on page 5. In column 6 you show a rate of $2.02 via the Milwaukee from Linton-Sullivan to Freeport. Is there not in effect a lower rate from mines on the Milwaukee in the Linton-Sullivan District to Freeport, Illinois, than the $2.02 rate which you show?

A. That is right. There is a rate of $1.90 per ton in effect from mines on the C. M. St. P. & P. Railroad in the Linton-Sullivan Group to Freeport, Illinois, via the lines of the C. M. St. P. & P. Railroad direct. The distance via that tariff route of the C. M. St. P. & P. direct is greater [fol. 1808] than the distance shown on this sheet.

Q. Now, referring to page 4, Dixon. From the Illinois Central origins in Linton-Sullivan Group to Dixon, Illinois, is there not a lower rate applicable than the $1.90 which you show in column 6?

A. Not to my knowledge. I believe $1.90 is the lowest.

Exam. Trezise: Is that what you wanted to ask?

Mr. Biaett: Well, I thought Mr. Scott probably knew that there was a lower rate.

The Witness: I would say there is not a lower rate.

By Mr. Biaett:

Q. Well, would you check that? I can give you the tariff reference. In Illinois Central Tariff 3100-H, ICC E-1802.

A. You wish me to check that?

Q. That shows a rate of $1.89 from Linton-Sullivan origins on the Illinois Central to Dixon, Illinois.

A. That is correct. I recall it now that you mention it, Mr. Biaett, yes, sir.

Q. And the distance via that route is longer, is it not, than the distance which you show?

A. Yes, sir.

Q. Now, referring to page 2, at Byron, are there not lower rates via the New York Central from Brazil-Clinton, Linton-Sullivan, Princeton-Ayrshire to Byron than the rates which you show in column 6?

A. Yes. My recollection is that there is a $1.90 rate, I be-
[fol. 1809] lieve.

Q. From which group?

A. Oh, from the Brazil-Clinton Group.

Q. And would the distance be longer or shorter than the distance which you show?

A. The distance, Mr. Biaett, in these exhibits—well, answering your question directly; I am sorry. If there is such a lower rate, the distance via the route over which that rate applies would be longer than the distance shown in this exhibit.

I want to reiterate here that the purpose of this exhibit is to show the average short tariff route distance from the group, regardless of the rate; and this exhibit also carries the rates that are applicable in connection with that short tariff route distance.

Q. Irrespective of whether or not the rate over which that—the route and the rate is the lowest from the group?

A. Yes, sir.

Q. Now, from Princeton to Byron there is also a lower rate via the New York Central than the rate which you show, isn't there?

A. I think I will check that for sure just now, Mr. Biaett. I am sorry, Mr. Biaett; I can't recollect. I will be glad to check into it and get that information.

Q. Would you also check the Boonville and Linton-Sullivan, Brazil-Clinton via the New York Central?

A. The three New York Central groups, Brazil-Clinton, [fol. 1810] Linton-Sullivan and Princeton-Ayrshire?

Q. Yes.

Exam. Trezise: As to Byron.

Mr. Biaett: And the route. To Byron, yes.

The Witness: I will be glad to do that. I can't recall offhand.

By Mr. Biaett:

Q. Now, Mr. Scott, I believe you were present at the pre-trial conference which was held in these proceedings, were you not?

A. Yes, sir.

Q. At that pre-trial conference, the carriers indicated the representative suspended points to which they would compute the rates and mileages in these proceedings, did they not?

A. Yes, sir.

Q. And you have used seven points which the carriers did not use?

A. There are some, yes.

Q. For what purpose did you select the points which you used?

A. I selected them for about the same reason, I would say, that the carriers selected theirs. It is representative of the district, and I will say this also to you, Mr. Biaett, at the time of that pre-hearing conference, as I recall it, it was held in October of 1942 or thereabouts, and it was about thirty or sixty days before the hearing in which this case was assigned; and I had already worked out my repre-[fol. 1811] sentative points, mileages and rates and so forth and had done considerable work the past three or four months on that, and because the carriers had selected different representative points, I did not see why, in view of the fact that the hearing was to be held shortly, I should change those. And even later on, when the hearing date was postponed, I couldn't see why two months of work should be done over.

There was no agreement, incidentally, made at the hearing about everybody using those representative points. There was——

By Exam. Trezise:

Q. You mean limiting it to those?

A. The carriers——

Mr. Biaett: I agree to that, Mr. Scott.

The Witness: Well, I just didn't want it from the record to show there might have been such an agreement.

Mr. Biaett: That wasn't my point at all.

By Mr. Biaett:

Q. Now, in selecting these points, did you take into consideration the population of the towns and the consumption of coal at those points?

A. No, sir. I took them as representative of the area, so as not to bunch them in one particular spot, or anything of that sort. I took them as representative of the destination area, to the best of my ability.

By Exam. Trezise:

Q. More or less the geographical, with the geography in mind, is that what you had in mind?

A. Yes, sir.

[fol. 1812] By Mr. Biaett:

Q. In selecting these points from a geographical standpoint, why did you select Wasco and St. Charles both? Your Exhibit 39 shows that they are located approximately one mile from each other.

A. Well, I did that—I can explain that, I think, very nicely; at least my idea.

I did that for this reason. We used St. Charles as an important consuming point, very representative point in the area. I think you will agree with me. And then I picked Wasco as a representative point for another reason. It was at Wasco that the carriers proposed to disrupt the differentials further. In other words, they were disrupted first in a previous adjustment, 1930 adjustment, and now in this proceedings the carriers propose to further disrupt that differential with Illinois; and it was for the purpose of showing the Commission what the carriers propose to do at certain of these points, Wasco being one of them that I used, that representative point.

Q. And the same would be true of Ladd, would it not?

A. No, I used Ladd for another reason. The only rates involved to Ladd, the only changes involved to Ladd, as I recall it, were certain mines in Indiana to Ladd. Ladd is practically the southern tip of this adjustment territory and, as such, is located very close to the Illinois groups, and in order to give what I would consider a fair picture, I used that point so there could be no possible criticism of [fol. 1813] my using the points in the northern part of the State.

Now, had I known no one else was going to do that, I wouldn't have included Ladd. It would have made by position much better.

Q. Have you any idea what the population of Wasco is?

A. It is probably about as big as Apple River.

Q. As a matter of fact, Apple River is about six times as large as Wasco.

A. Well, if one has one person and the other has six, that would be true.

Mr. Cardy: Have you any idea what the population of Apple River is?

Mr. Biaett: We will supply that for the record, since Mr. Scott doesn't know.

The Witness: No, Mr. Biaett frankly, I haven't checked the population of any of these destinations. Some of them, of course, I am familiar with in general, like Rockford and Freeport and some of those; but I had no intention of checking the population to pick out my representative points.

By Mr. Biaett:

Q. Then as I understand it, you selected these points to show the disruption in the differentials without regard to the population of the points or the consumption of coal at such points, did you?

A. No, your understanding is wrong.

Q. Isn't that what you just——

[fol. 1844] A. No, sir.

Q. Isn't that the explanation you made?

A. No, I made the explanation as to Wasco. You said why I selected these points. I selected these destinations as representative of the group. I took a map and I sat down and looked at it. I put a circle around this town; I did it personally. I put a circle around that town, and I tried to get a representative picture, the same, I imagine, as the carriers did. I believe the carriers did the same thing; they used to when I worked for them.

And then, to bring out the particular situation that I wanted to emphasize as to the disruption of the differentials, Wasco was representative of that and I added Wasco for that purpose.

By Exam. Trezise:

Q. And you, did not take the tonnage situation or the movement of coal or study of that to determine what points might have been representative from the standpoint of movement?

A. No, sir. I believe if Wasco gets one car of coal it should be involved in this judgment, the same as a town that got 100 cars of coal.

Q. But you didn't know whether Wasco ever got a car of coal?

A. No, I didn't.

By Mr. Biaett:

Q. I presume you selected Lanark for the same reason you selected Wasco, did you not?

A. No, sir. The situation, I believe, at Lanark is the [fol. 1815] same as at Wasco but that was representative. I just picked it off the map.

Q. Do you know the population of Lanark?

A. Well, I have been there. Let's see. I have driven through it, I should say. Oh, I don't know, probably 2500 people. I am just guessing. I haven't been there in ten years.

I would point out, Mr. Biaett, too, in connection with Lanark, that it is almost in the extreme western part of this destination territory involved in this proceeding.

Q. Now, will you please turn to your Exhibit No. 43.

A. Pardon me. What was that number, please?

Mr. Wilkinson: 43.

By Mr. Biaett:

Q. 43. On page 2, under the Illinois Central, Mr. Scott, from Linton-Sullivan, can you tell me whether or not there is an origin point in the Linton-Sullivan Group by the name of Sullivan?

A. Yes. It has been added since these exhibits were made up.

Q. It has recently been added to the tariff?

A. Yes.

Q. Do you know when it was added?

A. No, sir, not the exact date.

Q. Now, under the Pennsylvania mines, you show that there are no published mileages from Templeton No. 4?

A. Yes.

Q. Have you checked the Pennsylvania tariffs on that?

[fol. 1816] A. Distance tariffs?

Q. Yes.

A. Yes.

Q. Did you check Supplement No. 37 to Pennsylvania Tariff ICC 398?

A. I couldn't tell you about the supplement. I will say this, Mr. Biaett, that it is very possible since those exhibits were made up, Templeton Mine No. 4 has been added in the distance tariff. That is possible. However, we did not revise each and every one of our exhibits, because I didn't believe one origin point would materially, if at all, change the average mileages shown in these exhibits.

Q. Now, on page 6, with respect to Fulton County.

A. Page—oh, yes.

Q. Do you know whether or not there is an origin point on the M. & St. L. by the name of Maxwell, Illinois, which you have omitted?

A. I couldn't answer that offhand. no.

Q. Would you check that to determine whether or not there is an origin point which you have omitted?

A. Would I check it?

Q. Yes.

A. Yes, I will be glad to.

May I go off the record, Mr. Examiner?

Exam. Trezise: Surely.

(Discussion off the record.)

[fol. 1817] Exam. Trezise: Back on the record.

By Mr. Biaett:

Q. Now, on page 6 also, under the C. B. & Q., do you know whether or not there are origin points on the Burlington by the name of Rushville?

A. Yes, I believe there is.

Q. And also Augusta?

A. Yes.

Q. And those origin points are omitted from your exhibit?

A. That is correct.

Q. Now, on page 8, with respect to route No. 43, is that route correct, Mr. Scott?

A. That is not a route. That is just showing the list of joint mines, Mr. Biaett, and I believe—I will have to find it in here, wherever it is used.

That indicates that there is a joint—oh, there is an error there. That should read joint C. M. St. P. & P.-C. I. & L. instead of I. C.

By Mr. Stadell:

Q. What should that read?

A. 43, on page 8 of Exhibit No. 5, the explanation of circle reference 43 should read joint C. M. St. P. & P.-C. I. & L. Apparently it is a typographical error.

By Mr. Biaett:

Q. Now, will you turn back to Exhibit 42, please, Mr. Scott. On page 1 you show no distances from B. & O. origins in southern Illinois to Beloit, Wisconsin.

A. Yes, sir.

[fol. 1818] Q. Can you tell me why the distances from the B. & O. mines are omitted from the exhibit?

A. Yes. The rate shown on there, on this same exhibit under column 6 from southern Illinois to Beloit, is $2.40 from all of the origins—from all the origin carriers shown. Now, through an error, the B. & O. have a rate of about $2.80 or $2.90, I don't remember which, which was strictly an error, and we have left it out of here because we felt it would distort the picture, using the amounts for that rate in there.

In other words, Mr. Biaett, the B. & O., at the time the other carriers reduced those rates, it did not reduce its rate, undoubtedly through error.

Q. Now, the same is true of Centralia, is it not?

A. Yes.

Q. Now, on page 9 of this exhibit you show the distance from Alpha to Rochelle, Illinois, as 143.2 miles via the C. B. & Q. direct. Can you tell me what route of the Burlington you used in ascertaining that mileage?

A. No, I can't, no. I don't remember. On the C. B. & Q. Railroad direct, it was figured in their distance tariff; that is about all I can tell you.

Q. Do you know whether or not the C. B. & Q. can handle traffic from Alpha to Rochelle via any route other than Aurora without violating the fourth section?

A. No, I couldn't answer that. They may have Fourth [fol. 1819] Section authority to violate—Fourth Section departure authority.

Q. Now, on page 10 with respect to Victoria, can you tell me how many mines there are at Victoria?

A. One according to this record, and I believe that is all.

Q. You show a rate of $1.50. Do you know whether or not there is in effect a lower rate from Victoria than the rate which you show?

A. No, I do not know of any lower rate.

Q. You do not know, Mr. Scott, whether or not there is a rate of $1.45 applying via the Burlington direct?

A. No, I do not know that.

Q. Now, Mr. Scott, my impression from your exhibits is that on the whole they demonstrate that the rates from the Indiana groups, the present rates from the Indiana groups, the composite rates from the Indiana groups, are on a higher level than the composite rates from the Illinois groups, is that correct?

A. Yes, sir.

Q. And do they also show that the rates proposed by the carriers in these proceedings are on a higher level from the Indiana groups than from the Illinois groups?

A. Yes, sir.

Q. And they also purport to show, do they not, that the rates from the Indiana groups which you are proposing are on a higher level than the rates which the carriers are proposing from the Illinois groups?

[fol. 1820] A. I didn't quite follow that, Mr. Binett.

Q. They show, do they not, your exhibits, that the rates which you propose from the Indiana groups to Northern Illinois are on a higher level than the rates which the carriers are proposing to the same destination territory from the Illinois groups?

A. Yes, I believe that is true.

Q. Now, in computing the distances from the Illinois and Indiana groups to the representative destinations which you have shown, did you compute the distances from every origin point in Illinois and every origin point in Indiana?

A. Yes, sir.

Q. And the——

By Mr. Stadell:

Q. What was the answer, yes?

Mr. Biaett: Yes.

The Witness: Wait a minute until I check that, please. Yes, that would be true.

Would you ask the reporter to read that question, please?

Mr. Biaett: Yes, sir.

(Question read.)

The Witness: Yes.

By Mr. Biaett:

Q. And in getting your average distance from all of the origin points in Illinois, did you take into consideration the number of origin points in the different groups in securing your grand average?

A. Yes.

[fol. 1821] Q. And you did the same thing with respect to Indiana, did you not?

A. Yes, sir.

Q. So that where one group had one origin point and another group has forty origin points, that average distance is weighted by the number of origins in the respective groups, is it not?

A. It has to be done because the differences vary. You couldn't take an average of an average.

Q. Now, in securing your composite rates from Illinois and from Indiana, did you do the same thing?

A. You don't have the differences in rates by each origin that you do in distances. Your rates for the most part are on a group basis.

Q. And the rates, the composite rates from the Illinois groups and the composite rates from the Indiana groups which you show are just a simple average of the rates from the groups, are they not?

A. Right.

Q. The fact that there may be one origin point in one group and forty origin points in another group is not taken into consideration in securing your average rates?

A. No, I don't believe it proper.

Q. Now, Mr. Scott, is there also a group in Indiana by the name of the Evansville group?

A. Yes, sir.

[fol. 1822] Q. Does the Evansville group take a higher rate or a lower rate than the Boonville, Princeton, Linton and Brazil groups?

A. It takes a higher rate.

Q. Can you tell me why you omitted the Evansville group from your computation in securing the composite rates from the Indiana groups?

A. Yes, I believe I can. The first reason is that there is now in operation only one small mine down there on the E. & O. V. Railroad, and to my knowledge it ships coal to only a few points in the State of Indiana, most of it to the city of Evansville. The Coal Trade Association of Indiana, which I represent in this proceedings, has in all these cases represented the mines in the Linton-Sullivan, Brazil-Clinton and Princeton-Ayrshire and Boonville Groups. We have figured our mileages and rates from those groups. We haven't figured the Evansville group, in practically all of the proceedings in which I have represented that association, because it ships no coal up into this destination territory.

Q. Now, Mr. Scott, if you had taken the rate from Evansville in arriving at your composite rates, would that not have increased the composite rate from the Indiana groups?

A. I don't know but I believe it may have.

Q. Now, with respect to the Illinois groups which you took into consideration in arriving at the average rate or composite rate from the Illinois groups to the representa-
[fol. 1823] tive suspended destinations which you show, can you tell me how many mines there are at Alpha, in the Alpha group?

A. One, to my knowledge.

Q. Do you know if that mine in the Alpha group ships any coal to this destination territory?

A. No, I don't know that. I don't know whether it does or not, I should say.

Q. Do you know how many mines there are in the Atkinson group?

A. One.

Q. Do you know whether or not the mine in the Atkinson group ships any coal to this destination territory?

A. I have not made a check of that.

Q. I believe you previously stated that there was only one mine in the Victoria group?

A. Yes.

Q. Do you know whether the mine at Victoria ships any coal to this destination territory?

A. No, I do not know that definitely.

Q. Now, Mr. Scott, in taking Alpha, Atkinson, and Victoria, and including that in your computation, the composite rate from the Illinois groups, does not that lower the average rate from the Illinois groups?

A. In taking Alpha, Atkinson and——

Q. Victoria into consideration, and giving the rate from those groups the same weight as you did the rates from [fol. 1824] the Southern Illinois and Springfield and Fulton County groups?

A. Yes. I mean yes, go ahead, Mr. Biaett. That wasn't an answer to your question.

Q. I finished my question.

A. Yes, it probably would.

Q. Then to the extent that you have omitted the Evansville group in arriving at your composite rate from the Indiana groups and have included Alpha, Atkinson and Victoria in arriving at your composite rate from the Illinois groups, your exhibits represent an improper comparison, do they not?

A. Well, no. Using the same line of reasoning that you used in your questions, I would say that there is coal shipped from—this is as to my general knowledge I am talking about, Mr. Biaett—there is coal shipped from probably Alpha, Atkinson and Victoria, at least one or more of those points to, say, Rockford, whereas I know there is no coal shipped from Evansville.

Q. You stated previously you didn't know whether there was any coal shipped or not.

A. That is right, but you are asking me to make an assumption on something I don't know and I am not going to do that.

Q. Don't you think if you omit Evansville that you should have ascertained the fact of whether or not there were any shipments before you included these small mines in Illinois?

A. No, I don't think so.

[fol. 1825] Mr. Wilkinson: Ask if they are small mines.

The Witness: No, they are not small mines. They are rather large production.

By Mr. Biaett:

Q. Do you know what their production is?

A. It is in the record. Mr. Nelson put it in the record. I don't recall the exact figures now.

Q. Now, Mr. Scott, with respect to the Brazil-Clinton and Springfield rates, are Brazil-Clinton and Springfield on the same basis to Chicago?

A. I will tell you in just a minute, Mr. Biaett. May I have the carriers' exhibits, please?

Might I have the question again? I don't remember the points.

Q. Do Brazil-Clinton and Springfield take the same rates to Chicago, Illinois?

A. No, sir.

Q. Does Brazil-Clinton take a lower rate than Springfield to Chicago?

A. Yes, sir.

Q. How much lower?

A. Ten cents.

Q. Do you know whether or not the Brazil-Clinton is the nearer or the greater distant group to Chicago?

A. Brazil-Clinton is the nearer group to Chicago than Springfield, average distance.

Q. And it takes a differential of ten cents under Springfield?

[fol. 1826] A. Yes.

Q. Now, when you go to the suspended territory in Northern Illinois, do Brazil-Clinton and Springfield take the same rates or not?

A. Today no, for the most part.

Q. They do not?

A. Right.

Q. As I understand it, it is your contention in these proceedings that Brazil-Clinton and Springfield should take the same rates to this territory?

A. That is correct.

Q. Do you know whether or not Brazil-Clinton is less or greater distant than Springfield to the Northern Illinois

territory. Your Exhibit 45, page 5, I think will show the distance from Springfield.

A. Yes.

Q. And your Exhibit 44 will show the distance from Brazil-Clinton as——

A. The average distance from the Springfield district—I will put it this way, please: The average distance shown on page 5 of my Exhibit No. 45 from the Springfield district to the representative destinations is 246.4 miles. However, those representative destinations include those in Northern Illinois and Beloit, Wisconsin.

By Mr. Marks:

[fol. 1827] Q. How about referring to your Exhibit 73 for that same information?

A. Those are the carriers' mileages and not the Coal Trade Association of Indiana's mileages. If you want those, I will give you those, of course, too.

By Mr. Biaett:

Q. Can you compute from these exhibits the fact as to whether or not Brazil-Clinton is the greater or the less distant group as compared with Springfield?

A. To the Northern Illinois points or those including Beloit, Mr. Biaett?

Q. To the Northern Illinois points.

Mr. Wilkinson: Off the record.

(Discussion outside the record.)

By Mr. Biaett:

Q. Mr. Scott, in order to save time, would you know whether the fact that Beloit is included in this computation changes the average mileage picture to any considerable extent or not?

A. I would say it wouldn't.

Q. So that Brazil-Clinton is the greater distant group to Northern Illinois?

A. I will have to look at that, Mr. Biaett. I didn't look at Brazil-Clinton. Just one moment, please.

I am afraid Brazil-Clinton is the greater group by 11.5 miles, which I don't believe can be considered in a distance of 246 or 258 miles. I don't believe you can consider Brazil-Clinton a greater distance for hauls of that length.

[fol. 1828] Q. Well, take Dixon, Illinois, Mr. Scott. I believe your Exhibit 44 shows that the distance from Brazil-Clinton to Dixon is 258 miles, is it not?

A. That is correct.

Q. And your Exhibit 45, page 2, shows that the distance from Springfield to Dixon is 181.7 miles?

A. That is correct.

Q. Now, do you think that Brazil-Clinton should have a differential under Springfield if it is less distance to Chicago, Illinois, but should take the same rates as Springfield to Dixon, where the distance is approximately 70 miles greater?

A. No, I believe, using Dixon as an example, that there might probably be some differential Springfield under Brazil-Clinton. What that would be at this time I couldn't state. It would require study by operators and carriers. But I do believe that to Dixon there possibly could be a slight differential there, which is not true of the rest of the Northern Illinois destination territory.

Q. And you would base that, would you not, on the variation in distance between the two groups?

A. Only partially, not entirely. A differential should never be based on distance alone.

Q. Now, to the territory which was involved in Docket 25595, your exhibits show, do they not, that the difference in distance between Southern Illinois and Princeton is comparatively slight?

[fol. 1829] A. Well, let's look at that exhibit and talk about it. Princeton to the representative destinations, Mr. Biaett, in 25595?

Q. Yes. What exhibit is that, Mr. Scott?

A. That is in Exhibit 49, page 2.

Q. Princeton is a greater distance by 20 miles than Southern Illinois?

A. That is correct.

Q. And I believe in your direct testimony you took the position that the Indiana groups, including Princeton, were related to Southern Illinois in this adjustment, did you not?

A. That is right.

Q. Now, that exhibit also shows that Boonville is 70 miles greater distant?

A. That is right.

Q. Than Southern Illinois?

A. That is right.

Q. Now, do you think, Mr. Scott, that Princeton should take a lower rate than Southern Illinois and Boonville should take a lower rate than Southern Illinois to the Northern Illinois destinations, or any destinations, in view of that greater distance?

A. I agree with the Interstate Commerce Commission; their decision in that matter is proper.

Q. Well, were the differenfials which you referred to as the standard differentials prescribed by the Interstate [fol. 1830] Commerce Commision in that case or in any case?

A. Now we come down to something, Mr. Biaett, that——

Q. I asked you a very simple question. I don't care about their dictum or anything else. Were they prescribed or were they not prescribed? That is the only thing I am concerned with.

A. In my opinion—I am sorry, I will have to answer it the way I want to answer it, not possibly the way you might want. In my opinion the Commission in that case, by their action in that case, prescribed the differentials or approved the differentials—we will use the word 'approved'' rather than ''prescribed.''

Q. I am using the word ''prescribed.''

A. They did not definitely prescribe; they approved them. Let's put it that way.

Q. They approved the then existing differentials?

A. Yes.

Q. And the language of the Commission in that case will speak for itself?

A. Definitely.

Q. You will agree with that?

A. It is very definite.

Q. As to whether or not they were approved?

A. I think so.

Q. Now, you take the position that these differentials [fol. 1831] cannot be based upon distance and that Princeton, despite the fact that it is greater distance than Southern Illinois and Boonville, despite the fact that it is a substantially greater distance than Southern Illinois, should take lower rates than Southern Illinois and that distance should be disregarded?

A. No, not disregarded. It should be given consideration, Mr. Biaett, but not alone, not solely.

Q. Just how much weight should the Commission give to distance in fixing these differentials?

Mr. Wilkinson: I object to that, Mr. Examiner, to having the witness testify as to the percentage it should give.

Exam. Trezise: What weight does he give to it?

By Mr. Biaett:

Q. What weight do you give to it, Mr. Scott?

Mr. Wilkinson: I object to trying to fix by a percentage the amount of weight to be given to any one factor in establishing the percentage.

Mr. Biaett: I am not asking for percentage.

Exam. Trezise: Ask him what importance it is.

Mr. Wilkinson: It is the same thing.

Exam. Trezise: The construction of rates; his opinion.

The Witness: In considering the rates from Southern Illinois and the rates from Boonville, they must be treated or you must give consideration to this rate adjustment applying from mines in Illinois and Indiana as a whole. You cannot any more, I believe, in my opinion, single out a dif- [fol. 1832] ference in distance as important, as the major important paramount factor to be given consideration in arriving at a differential between two groups such as Southern Illinois on the one hand and Boonville on the other, than you can in giving consideration to the rates applying from two points of origin in the same group.

Now, to illustrate what I mean, in answer to your question, you should—we have mentioned that there is a distance of 17 miles, Boonville over Southern Illinois, to the 70 representative destinations as shown in my Exhibit 49-2, which reproduces Appendix D of Docket 25995.

Now, if you will refer to my Exhibit No. 63—I will try to make myself clear—from the Southern Illinois Group to the first point on page 1 of that Exhibit 63, Beloit, Wisconsin, the rate in effect from Southern Illinois to Beloit is $2.40. That rate applies for a distance from Southern Illinois—from Christopher, Illinois, a short tariff route distance of 330.5 miles. It also applies from McLaren Mine on the Missouri Pacific for a distance of 450.9 miles; a difference in distance of 120.4 miles.

By Mr. Biaett:

Q. That is a difference in distance between origins in the same rate groups which the Commission has established?

A. I say you have to give the same amount of consideration to the differentials between your groups as you do to the difference in distance of the points.

[fol. 1833] Q. Just a minute, Mr. Scott. In getting this average difference in distance between Southern Illinois and Boonville, are not the difference in distance which you are pointing out now taken into consideration in that very average?

A. I don't follow that at all.

Q. Now, in getting the average distance from Southern Illinois to show that it is 70 miles less than Boonville, you took into consideration these averages here?

A. Oh, yes, but here is what I am trying to point out, Mr. Biaett, if I may, that you must give—in considering the rates, the differentials that will apply from mines in Illinois and Indiana to this destination territory in the Northwest, it is important that the Commission or any one else give consideration to the group adjustment as a whole and not single out Southern Illinois and Boonville on the one hand and give consideration to that alone, any more than they should give consideration to two points in the same group for which the difference in distance is 120 miles and from which two points the same rate applies.

Q. Then if you don't think the Commission can give consideration to distance in these proceedings, what do you think they should give consideration to?

A. I haven't said they shouldn't.

Q. Well, what factor other than distance should they give consideration to?

A. I think one of the most important factors is competi-

[fol. 1834] tive, the competitive situation that exists between the groups.

Q. What competitive situation?

A. By that I mean this. Using Boonville as an example, it must ship its coal to the markets to which Princeton-Ayrshire, Brazil-Clinton and Linton-Sullivan ships its coal. It must——

Q. And also Southern Illinois?

A. And Southern Illinois, yes; Southern Illinois, Springfield. The Southern Railroad is entitled to traffic from

mines located on its line to this destination territory just as much as any other railroad serving the Indiana groups or a railroad serving the Southern groups. And in making differentials to apply between the Boonville group on the one hand and these other groups, it is important that the differential arrived at be arrived at by taking into consideration the competitive situation existing, so that the Southern Railroad and the mines on the Southern Railroad can ship in competition with the other mines in the other groups.

Q. Well, now, Mr. Scott, isn't the converse also true from Southern Illinois? Aren't the Illinois Central and the Burlington, the New York Central and the Missouri Pacific and the C. & E. I. in the same position? Aren't they entitled to have these differentials based on the service which is rendered from the different groups?

A. Oh, definitely; definitely. You asked me and I gave you an answer to one of the reason why, Mr. Biaett. You [fol. 1835] asked me, rather, what other reasons should be taken into consideration. That is my answer. That is one of them.

Q. That is one of them?

A. Transportation cost is another very important factor. We must realize, of course, in the same example I cited, that neither the operators in those groups, the Interstate Commerce Commission nor the railroads, no one would expect the carriers, in order to permit their mines to compete with other mines, that they should haul coal at a loss.

Q. Now, you take the position that Boonville must have a rate of ten cents lower than Southern Illinois to compete in this territory. Can you tell me why Boonville must have a ten-cent lower rate in order to compete?

A. Yes, I think I can. Boonville is a part of the Indiana rate groups. The coal produced in the four groups in Indiana for the most part, in general—I am not going into detail—in general is similar. They must compete with each other for the markets.

Q. And also with the Illinois groups?

A. And with the Illinois, yes. I am giving you my answer as best I can and then you can ask me these other questions later. And it must be remembered that we have four different rate groups in our Indiana field which, in distance, is not as great as one group in Illinois, the Springfield group; but we have four different rates.

[fol. 1836] Now, in order for Boonville to compete with the three groups to the north of it into this territory, it must have a differential that will permit it to compete with those groups north of it in Indiana.

Now, the three-cent differential over Princeton-Ayrshire or the ten-cent differential over Linton-Sullivan is a differential that permits it to do that, as has been demonstrated by past performances. If that differential were increased, Boonville over Southern Illinois, it would automatically result in an increase in the differential, Boonville over the other Indiana groups, Brazil-Clinton and Linton-Sullivan, and those groups which ship coal to the market which Boonville is shipping to today.

In my opinion as a coal man, the tonnage, any tonnage shipped into this northern market, to which Boonville ships now, should for any reason Boonville lose it, would be more apt to go to the Northern Indiana groups. So that Boonville's strict competition is with two groups, north as well as Southern Illinois.

Your question, it is true, related to Southern Illinois, but I am attempting to tell you why it needs a ten-cent differential Boonville vs. Southern Illinois, from a competitive standpoint, because of its relationship to other groups.

Q. Irrespective of the effect upon the shippers of coal in Southern Illinois? That is your position?

[fol. 1837] A. I don't see any effect upon them. I can't say with respect to the effect because I don't know of any effect.

By Mr. McElroy:

Q. You see no reason why Southern Illinois should not be able to absorb this ten cents over Boonville, do you?

A. Now you are getting into prices and I can't talk about prices.

By Mr. Biaett:

Q. You were just talking about who was going to lose business to whom?

A. Not based on prices.

Q. Based on what?

A. Based upon my knowledge of the shipment of coal in Indiana. I know more about movement of coal in Indiana

than I do in Illinois. My opinion is what I say based on my knowledge.

Q. Now, can you give me from your exhibits the difference in distance between Brazil Clinton and Princeton-Ayrshire and Boonville to this Northern Illinois territory?

A. I have got my exhibits mixed up.

Q. Beween Brazil-Clinton and Boonville is what I mean.

A. Between Brazil-Clinton and Boonville?

Q. Yes.

A. Yes, sir. 138.7 miles.

Q. Now, what is the difference in distance between Springfield and Southern Illinois to this same territory?

A. 128 miles, including Beloit, but that is approximately, [fol. 1838] to the Northern Illinois territory, I believe.

Q. Now, what is the differential between Brazil-Clinton and Boonville to this territory? It is 10 plus 7 plus 3, is it not, Mr. Scott?

A. It is greater than that from mines on the Milwaukee Railroad from Brazil-Clinton to some of these points.

Q. To what points?

A. Rockford, Freeport, Byron, several others and all the other intermediate points to Rockford and Freeport; and is now proposed to do the same thing at Beloit.

Q. At Beloit, under the rates which are published, Boonville is 20 cents over Brazil-Clinton, is it not?

A. In effect today, yes, sir.

Q. In effect today?

A. Yes, sir.

Q. Because there was no change in the Boonville rate?

A. That is correct. Oh, I beg your pardon. That is correct.

Q. And Springfield is 30 cents under Southern Illinois to Beloit, is it not?

A. Yes, sir.

Q. Do you know of any reason why there should be a greater spread between Springfield and Southern Illinois than between Brazil-Clinton and Boonville?

A. I can tell you why there shouldn't be a greater spread between Brazil-Clinton and Boonville. Springfield and [fol. 1839] Southern Illinois I am not—I can't tell you about their competitive situations.

Q. Don't you think that your differentials in Indiana must be measured by the differentials which apply between

the Illinois groups, the principal Illinois groups, Springfield and Southern Illinois?

A. No, not by the distances alone, no.

Q. They must be measured by the competition?

A. That is one of the factors. You see, I am trying to point out there are several factors. I think the most——

Q. Can you tell me this: Just let me ask you a frank question. Why does Boonville have to have a ten-cent lower rate than Southern Illinois in order to sell its coal?

A. Well, I will answer it and start an argument. First of all, you cannot divorce Boonville on the one hand and Southern Illinois on the other in giving consideration to the differentials that should apply from Boonville.

Q. Let's divorce them just for——

A. I can't answer your question when you divorce them. I have no way of answering that question when you divorce them.

By Mr. Wilkinson:

Q. What you mean by that is that the whole thing is one adjustment?

A. That is right.

Q. And you can't take any part of it any more than you can take the short and the long haul of a particular group? [fol. 1840] A. That is right.

Q. Is that what you are trying to say?

A. That is right.

Mr. Biaett: That is all I have for the present, Mr. Examiner.

By Exam. Trezise:

Q. Mr. Scott, can't you make this a little clearer, because the Commission might be a little confused. In your exhibit here that you show the rate and the distance from Victoria to Rockford, which was left to stand in the air in your answer, you show the present rate is $1.50 and the distance is 136.7 miles.

A. Yes, sir.

Q. Now, why would you show that rate when the rate, according to the Carriers' Exhibit 3, and it has a page 28 of Section 5, I believe, shows that there is a rate of $1.50 for 137.7 miles but that there is also a rate of $1.45 for 198.1 miles. Was it your idea that if that $1.45 rate

applied for this longer distance that nothing would move over the lower rate and therefore you should show the higher rate for the shorter distance?

A. No, sir. I can explain that. The exhibit of mine to which you are referring, Mr. Examiner, is Exhibit No. 42. On the face of Exhibit 42 it states that this is a statement of distance via short tariff routes from Illinois groups to representative points in Northern Illinois; also Beloit, Wisconsin.

We have shown in this exhibit the average short tariff [fol. 1841] route distances from each origin line in each origin group, regardless of the rate. This has no bearing on the rate itself, this exhibit; its purpose is to show the average short tariff route.

From Victoria, to which you refer, we show the distance of 136.7 miles with a rate of $1.50, and in arriving at our average distance from the Victoria group and in our average distance from the Illinois groups as a whole, we used 136.7 miles and not the higher distance, via which the $1.45 rate applies.

Now, if you will refer to my Exhibit No. 40, you will find to Rockford, Illinois, from Victoria, under column No. 18, that we have used the $1.45 rate; so that we have used the distance applying via the short tariff route but used the lowest rate. We have computed our distances separately in order to give the short tariff route distance from the groups.

Q. Then you would indicate that there is a rate of $1.45, presumably by an intrastate route from the carrier to Rockford?

A. Yes, sir. We have shown in our Exhibit 40 and have used it in our exhibits throughout. I am sorry I didn't think of that explanation when Mr. Biaett asked me about that.

Q. Did you find this rate which I am unable to locate at this minute of $1.50 as being the suspended rate from Victoria to Rockford in carriers' tariff?

A. No, I believe that is the present rate, sir.

[fols. 1842-1844] Q. My question was, did you find—I will find it.

A. Oh.

Q. Give me time enough.

A. I will look, sir. I will have to look at that. I don't remember each and every one of these.

Mr. Wilkinson: Off the record.

(Discussion outside the record.)

Exam. Trezise: I was about to try to find where the suspended rate was $1.50 and I will find it in a minute.

The Witness: There is no suspended rate of—oh, I beg your pardon, there is. Not a proposed; I am sorry.

By Exam. Trezise:

Q. What is that?

A. I was thinking of a proposed. You mean a suspended rate of $1.50.

Q. A suspended rate of $1.50. Mr. Cardy says $1.60 and——

A. No, I guess the suspended rate is $1.60 and $1.65. The present rate of $1.45 has been proposed as $1.60 and is suspended. The present rate of $1.50 has been proposed increased to $1.65 and has been suspended. Therefore our present rates are $1.45 and $1.50 and our proposed or suspended rate is $1.60 and $1.65.

[fol. 1845] By Mr. Zoll:

Q. Mr. Scott, as I understand your testimony, you are [fol. 1846] of the opinion that the present rates from Indiana to these Northern Illinois destinations are unreasonable, in violation of Section 1, is that correct?

A. The present rates are unreasonable in violation of Section 1? Yes. Our contention is that probably the strongest—our principal contention is that they are relatively unreasonable with relation to the rates from the Illinois fields.

Q. In relation to the present rates from Illinois?

A. Both present and as proposed.

Q. Then the answer to my question is yes?

A. Yes. I modified it just a little.

Q. Well, I wonder, if that is your opinion, why you have not previously filed any complaint against the rates?

A. The answer to that question, Mr. Zoll, is this: That these rates have practically been in constant litigation, or have been constantly—have been actively handled by the carriers and the operators since these rates were first published in 1930. I don't know of a year that has gone by since then that there hasn't been some sort of an attempt made to straighten out those rates. There has been no

lapse of time that we filed a complaint that is before the Commission in the thirteenth section proceeding, or an I & S proceeding. They were before the Commission on the rates from the Milwaukee mines, which wound up in the Supreme Court. They were always in constant—these rates were constantly being acted on or rather I should say [fol. 1847] constantly considered with the purpose of straightening them out.

Q. What was in my mind was this, that a statement that you believed the rates from Indiana unreasonably doesn't carry as much weight with me as it might, in view of the fact that you never bothered to do anything about it.

A. I think if you will check the record in I & S Docket 4368, in which the carriers proposed to reestablish the normal differentials from the Brazil-Clinton Group to most of these Northern Illinois destinations but did not propose to do it from the Princeton-Ayrshire and Boonville Group, you will find Indiana operators were very active in that proceeding, and were successful in that proceeding.

Q. I understood you to say that the present rates from Indiana were unreasonable.

A. Yes.

Q. As they are today, and would continue to be so if these rates were not proposed in this I & S case.

Q. I don't quite—if these rates were not proposed? We don't agree with the proposed rates either, of course.

Q. No. You think that the present rates from Indiana violate Section 1?

A. Yes.

Q. They are excessive? And they have done that for some years, I gather?

[fol. 1848] A. Yes.

Q. All right. It is also your opinion, then, also that the present and the proposed rates from the Illinois mines violate Section 13 of the Act?

A. Present rates from the Illinois and Indiana mines violate Section 13 of the Act? Yes, if I have stated your question right.

Q. Well, I will put it this way: Is it not your opinion, as I read your testimony, that the present as well as the proposed rates from the Illinois mines are unduly low, in violation of Section 13?

Mr. Morgan: I object. That is a legal conclusion.

Mr. Zoll: No, it is not a legal conclusion. I am asking the opinion of this witness.

Mr. Morgan: The witness is not a lawyer.

Mr. Zoll: I didn't ask him if he is a lawyer.

Exam. Trezise: I think we will let him answer this.

By Mr. Zoll:

Q. I just wanted to know, Mr. Scott, what your opinion was. As I read Part 2 of your prepared statement, that is the impression I get of your position.

A. That the rates from Illinois, both the present and proposed rates from Illinois, are in violation of Section 13?

Q. Yes, sir.

Mr. McElroy: He asked you if they were unduly low, in violation of Secton 13.

[fol. 1849] The Witness: They are.——

Exam. Trezise: Well, about this violation of Section 13, I think that is objectionable. I will go along with you on that.

Mr. Zoll: Well, I just call attention to the fact that the witness stated it on his direct.

Exam. Trezise: Giving his opinion about the rates, yes.

Mr. Wilkinson: I think you will find page 2 just states the contention and does not give an opinion; the contention we are making, which we trust the evidence supports.

By Mr. Zoll:

Q. Well, you don't know offhand what your contention——

Mr. Wilkinson: The objection has been sustained to your question.

Mr. Zoll: I didn't understand so.

The Witness: If I can have the question again——

By Mr. Zoll:

Q. Your contention at the present time——

Mr. Morgan: The objection has been sustained.

The Witness: You are asking me to answer that and I don't know whether it has been objected to or not.

Mr. Zoll: Let's start over.

By Mr. Zoll:

Q. Do you contend that the present rates from the Illinois mines to these Illinois destinations are unreasonable?

Mr. Morgan: If he knows.

[fol. 1850] Mr. Zoll: I am merely asking for his position. I want to know what he is contending. Certainly there is nothing objectionable to that.

Exam. Trezise: All right. That is his contention.

The Witness: My contention is that the present rates from Illinois to these destinations are unreasonably low with relation to the rates from the Indiana fields.

By Mr. Zoll;

Q. They must be unlawful, then?

A. Yes.

Mr. Cardy: We wouldn't need the court if we could put witnesses on to prove that.

Mr. Morgan: The whole testimony on that line is objectionable and I think it should be stricken from the record.

Exam. Trezise: I think we will let him give his opinion on it.

Mr. Wilkinson: He was asked what his contention was and he has stated what the contention is.

Exam. Trezise: Yes; we will let that stand.

By Mr. Zoll:

Q. Now, in I. & S. 5139, the carriers have proposed certain increases in the rates. Is it your contention that the rates from the Illinois mines, as proposed, are improper or unlawful?

A. Yes, with relationship to the rates from Indiana.

Q. In view of the fact that you have said that the present rates from the Illinois mines are unduly low, have you in the [fol. 1851] past two or three years taken any steps to have that corrected?

Mr. Wilkinson: I object to that. He has asked that question three times now and the answer has been that there have been cases pending that involve these rates.

Mr. Zoll: No previous question——

Exam. Trezise: You want his answer again or not?

By Mr. McElroy:

Q. Well, Mr. Witness, did you say that the Illinois rates were duly low? Was that your testimony?

Mr. Wilkinson: In relation to the Indiana rates; rates from Indiana to these points.

Mr. Morgan: He can't say that in view of his own testimony.

Exam. Trezise: Do you want him to answer that again?

Mr. Zoll: In vindication of my question, my previous question related to what he did about the rates from Indiana. Now I am asking him what he did about the rates from Illinois. I haven't asked the same question and I haven't got an answer to it.

Exam. Trezise: You haven't got an answer satisfactory to you. I see. Go ahead.

Mr. Zoll: I haven't got any answer. We will leave it go.

Mr. Wilkinson: Question withdrawn.

Exam. Trezise: You asked him why he didn't file a complaint against the Illinois rates. I think that is about the question that you have asked.

[fol. 1852] Mr. Cardy: Certainly, there might be a thousand reasons why he shouldn't file a complaint against them. He might not have been able to get competent counsel. I don't know.

Exam. Trezise: Would you be satisfied to get an answer to that, Mr. Zoll?

Mr. Wilkinson: Maybe he wants to ask if Indiana filed a complaint.

Exam. Trezise: He didn't ask if he did, but I thought he had in mind something else.

Mr. Zoll: Let's sail to smoother waters.

By Mr. Zoll:

Q. Turn to Exhibit 72, please, page 2; the middle frame of figures. This is a very innocuous question, Mr. Scott. You read into the record the total and average of the H. & H. scale to the Illinois destinations, excluding Beloit, and in column 4 you said that the figure that you read was 62——

A. Pardon me, did you say my Exhibit 72?

Mr. Wilkinson: Yes, 72.

The Witness: I have got the wrong one. I am sorry. Mr. Zoll, I have it now; I am sorry.

By Mr. Zoll:

Q. The figure you read in for the middle frame of figures in column 4 was 62.

A. Yes, sir.

Q. I am just wondering whether that can possibly be correct, in view of the fact that all the other figures are cut down by the elimination of Beloit.

[fol. 1853] A. Yes, it is true, Mr. Zoll. I noticed that in making our computations and thought that some one might wonder about it.

But I will point it out this way: The average distance from the composite of the Illinois groups to all destinations, including Beloit, is shown as 291.2. The H. & H. scale rate for that distance is 296. Now, the average distance to the Northern Illinois destinations, excluding Beloit, is 298.1; and the H. & H. scale rate is 289. It breaks, in other words, at the 290 block, and that results in using a rate of $1.80, giving you 62 per cent instead of 61. The 2-mile difference goes into another block.

Q. Now, on page 1 of that exhibit, Mr. Scott, these are the rates which you suggest be the rates from Indiana, as I understand it, with the present or the proposed Illinois rates maintained?

A. As shown on page 2 of this exhibit, it is based on the proposed rates to Illinois.

Q. That is what I thought. In other words, from Princeton to Rockford, you propose a rate of $2.12 for a distance of around 360 miles—that may not be the exact mileage—with a rate of $2.25 obtaining from Southern Illinois for a distance of 369 miles. That is what you are suggesting, isn't it?

A. I will have to get those again before I can answer that. A distance of 360 miles from Boonville?

[fol. 1854] Q. No. Do you want her to read it?

A. Yes. I think that might be the best.

(Question read.)

The Witness: I think those distances are approximately correct and that is true.

By Mr. Zoll:

Q. That would make a difference in rates Princeton vs. Southern Illinois of how much, 11 cents?

A. Thirteen cents.

Q. Thirteen cents. And the present difference in Princeton vs. Southern Illinois is one cent, is it not?

A. Yes, I believe that is right.

Q. How long has that difference of one cent existed?

A. It has existed since the rates from the Southern Illinois group were reduced, complying with the orders of the Illinois Commission. I believe the date was August 1, 1930.

Q. In other words, that difference has been in existence about thirteen years?

A. Yes; subject to negotiations at that time with the carriers or to proceedings before Commissions.

Q. Now, how old are these differentials, Princeton vs. Linton-Sullivan?

A. Is that the whole question?

Q. Yes.

A. Oh, I thought you were going to ask me something else. They are about, more than 20, 25 years old; I don't know exactly.

Q. In other words, that differential is, oh, about ten or [fol. 1855] twelve years older than this differential, Princeton vs. Southern Illinois?

A. Yes, but the standard differential which we are contending, which was in effect and still in effect to a great many other points, was in effect prior to August 1, 1930, the differential which we are contending, 13 cents under Southern Illinois, and was also in effect to other points in the Northern Illinois District and the Northwest.

Q. Now, Mr. Wilkinson asked Mr. Rozene whether natural gas was not less of a factor in Northern Illinois and Wisconsin than in adjacent territories as, for example, Iowa. Mr. Rozene said that he wasn't in a position to answer. Are you in a position to answer that?

A. I know something about it.

Q. Well, would it take too long to give an answer?

A. Oh, the State of Iowa is honeycombed, we might say, with natural gas pipelines serving many of the important cities. And that is borne out by, of course, the reduced rates published by the carriers to the State of Iowa on fine coal to meet that competition; and to Northern Illinois, there is probably very little natural gas competition.

Q. Would that be true of Southern Wisconsin as a whole?

A. Yes, true also of Southern Wisconsin. I am making that answer based on the knowledge I have of the situation.

Mr. Zoll: I think that is all; thank you.

[fol. 1856] Exam. Trezise: We will adjourn until 2:00 o'clock.

(Witness excused.)

(At 12:30 o'clock p. m. recess until 2:00 o'clock p. m. of the same day.)

Afternoon Session

2:00 o'clock p. m.

Exam. Trezise: Gentlemen, when you are ready we will proceed.

HAROLD V. SCOTT, resumed.

Direct examination (Continued).

By Mr. Wilkinson:

Q. Mr. Scott, just before we adjourned for the noon hour, you were referring to Exhibit No. 72. Can you find that exhibit?

A. Yes, sir.

Q. I call your attention to the rate shown in column 2 after Lanark, Illinois. Is or is not that $1.75 a typographical error? Should it not be $1.95, from Brazil-Clinton to Lanark?

A. That is right. On page 1 of Exhibit 72, under column 2, the rate from Brazil-Clinton to Lanark, Illinois, is shown as $1.75. That is a typographical error and should be $1.95. It makes no change in resultant figures.

By Exam. Trezise:

Q. And this change was not because there hasn't been a $1.75 rate by some other route?

A. No, sir.

By Mr. Wilkinson:

Q. This change was due to the stenographer hitting the [fol. 1857] wrong button on the machine.

A. That is right.

Mr. Bather: While we are on Exhibit 72, I would like to ask Mr. Scott some questions.

Exam. Trezise: Mr. Bather.

Cross-examination (Continued).

By Mr. Bather:

Q. On page 1 of this exhibit, you do advocate an increase in the rates from Indiana mines to Freeport and Rockford, do you not?

A. Yes, because we have related our rates to those proposed—in this particular exhibit we have related our rates to those proposed from Southern Illinois. However, the rates shown here, whatever rates may be shown here should be related to those from Southern Illinois, if the rates proposed from Southern Illinois are approved. If any other basis is approved, then our rates as suggested here should be changed to correspond with the standard differentials with the Illinois rates.

Q. And this proposal is based entirely upon your desire to maintain what you say are the standard differentials from Indiana mines?

A. Yes, sir.

Q. What consideration did you give to the consumers of coal in making this proposal?

A. I think a very important consideration.

Q. You must have, to have advocated an increase of 15 cents a ton.

[fol. 1858] A. Well, first, now, I will have to answer that last question. I advocate that because the carriers are proposing increases in the rates from Illinois and these rates are based on that. I have no objections to the rates from Illinois remaining where they are and our rates adjusted to give us our rates based on standard differentials.

Q. Do you subscribe to the proposal of the carriers that 15 cents a ton is justified?

A. In the rates from——

Q. The increase of 15 cents per ton in the present rates is justified?

A. From where, Mr. Bather?

Q. From Illinois, Indiana, or West Kentucky.

A. I say the increase of 15 cents per ton as proposed is not justified from all groups because it then does not establish rates in their proper relationship.

Q. Then why did you propose an increase in the rates from the Brazil-Clinton District to Rockford of from $1.80 to $1.95?

A. If you will read the heading of this statement, you will notice it says, "Statement Showing the Rates that would obtain from the Indiana Groups to the Representative Destinations and to a Composite of the Representative Destinations, Based on the Standard Differentials Between the Indiana Groups and the Illinois Groups." I am not advocating those rates; I am showing what our rates should be based on the rates the carriers are advocating from the Illinois mines.

[fol. 1859] Q. As I take your testimony, you don't care what the rate is, so long as your differentials are maintained?

A. That is absolutely correct.

Mr. Bather: That is all.

Exam. Trezise: Further questions?

Mr. Stadell: I have some questions, Mr. Examiner.

Exam. Trezise: Mr. Stadell.

By Mr. Stadell:

Q. Toward the close of your direct testimony, Mr. Scott, in answer to a question by Mr. Wilkinson with respect to the use of the average distances over the shortest tariff routes that were computed by Mr. Rozene in his exhibits, you stated that it was your position and the position of the operators that you represented in Indiana that the Commission should give no consideration to those average mileages because they did not represent the minimum service from the Southern Illinois Group, is that right?

A. Yes, sir.

Mr. Wilkinson: Well, just a minute.

By Mr. Wilkinson:

Q. Wasn't it from any group? You didn't pick out Southern Illinois, did you?

A. Oh, no, it was from any group.

By Mr. Stadell:

Q. From any group; and by "service" you meant transportation service?

A. Yes, sir.

Q. You think it is imperative, do you, that the Commis-
[fol. 1860] sion in passing upon the rates involved in this proceeding should give consideration to and predicate such rates upon the minimum transportation service performed?

A. Yes, sir, offered by each railroad?

Q. From each group?

A. Yes, sir.

Q. Now, you have stated, I believe, in answer to a question by Mr. Biaett, that you have not included in your average mileage computations in your exhibits the average mileage to any of the representative suspended points from the Evansville group?

A. Yes, sir.

Q. Is that right? You have not included that?

A. Yes, sir.

Q. And the reason you gave for that, as I understand it, was that the production of coal in that group, in your opinion, was small?

A. That was an additional reason. That wasn't the only reason.

Q. What was the additional reason?

A. There was no coal shipped from that mine in that group up to this Northern Illinois territory. It is a mine that serves the local trade, for the most part.

Q. Isn't there more than one mine in the Evansville group that takes the Evansville group rate to the destination territory involved here?

A. There used to be more than one. There was one rather large mine there, but it has gone out of business.

[fol. 1861] Q. What was the name of that mine?

A. Crescent Mining Company.

Q. You say that mine is out of business?

A. Yes, sir, it is closed down.

Q. Is it vacated and permanently abandoned?

A. No, the operation has been discontinued by the operators, sir.

Q. The mine has not been abandoned?

A. What do you mean by "abandoned"?

Q. I mean permanently abandoned and the machinery taken out of the mines.

A. Not to my knowledge, it hasn't. That is up to the last I heard, no.

Q. Can you give us the production of that mine in 1941 or 1942?

A. No, I haven't got the figures.

Q. Was it approximately 100,000 tons annually?

A. It might be. I don't know the exact figure, Mr. Stadell.

Q. What is the other mine in the Evansville, Indiana, district?

A. The Horton Mine on the E. & O. V. Railroad.

Q. Will you give us the annual production of that mine at the present time?

A. I think it is around a little less than 20,000 tons a year, I believe.

Q. Isn't it approximately 30 to 35,000 tons per year?

A. I think it is around twenty.

[fol. 1862] Q. You have no definite figures as to the production in 1941 or 1942?

A. No, I am relying on my memory, of course.

Q. Are those two mines members of the Coal Trade Association of Indiana?

A. The Horton Coal Company is and the Crescent, when it was operating, was a member.

Q. What was the last year that the Crescent Coal Company, Crescent Mining Company, operated?

A. The last full year was last year.

Q. 1942?

A. 1942, yes.

Q. You don't know, do you, whether that mine is going to continue in operation, that is, whether it is going to operate sometime this year or next year, do you, of your own knowledge?

A. No, sir.

Q. Now, you have also omitted from your average mileages from Indiana, the average mileages over the tariff routes from the five origin points on the Milwaukee Railroad in the so-called Bedford, Indiana, group, have you not?

A. I don't know of any mines down there.

Q. That doesn't answer my question, Mr. Scott.

A. Isn't that the question?

Q. Will you answer my question?

A. May I have the question?

Mr. Stadell: Read it, please.

[fol. 1863] (Pending question read.)

The Witness: That is correct. I thought you said "mines".

By Mr. Stadell:

Q. And do I understand that the reason that you failed to include the average mileages over their short tariff routes from those origin points to the representative Northern Illinois points involved in this proceeding in your exhibits was because the production at those particular origin points was of small consequence?

A. No, I think I would say it this way, that there are five origin points down there near Bedford, Indiana, north of Bedford, Indiana. There are no mines located there on the railroad. Those origins were put in in order to move a very small tonnage of coal which those truck operators might want to ship by rail occasionally. The rates only apply to destinations on the C. M. St. P. & P. Railroad and to no other destinations. They are odd rates, have no relationship whatsoever to any group rate, and therefore I do not believe that they should be included in adjusting the rates from the Indiana groups as compared to the Illinois groups.

Q. Your organization has changed its position in that respect, has it not, since the hearing in I. & S. 4368, when you advocated very strenuously that rates from the mines or the origin points in that group be made seven cents over the Linton-Sullivan rates?

Mr. Wilkinson: I object to that question. Mr. Scott was [fol. 1864] not with the organization in the hearing of that case, and the record in that case will speak for itself as to what the association advocated or did not advocate.

Mr. Stadell: Mr. Scott is representing the same organization here, Mr. Examiner. It was represented by his predecessor in Docket I. & S. 4368.

Exam. Trezise: Well, you want his answer? I believe he can answer it; even if he tells you he doesn't know. I don't know what his answer will be.

The Witness: That must be it. I do not know because I was not with the organization at the time.

By Mr. Stadell:

Q. You haven't read the record in I. & S. 4368?

A. Yes, I have.

Q. You didn't familiarize yourself with the position of your organization in that case, on the matter that I have asked you about?

A. I didn't get it from the record, no, sir.

Q. Now, how do you know that these two mines in the Evansville, Indiana, group have not been shipping coal to any of the representative points in Northern Illinois involved in the case?

A. Oh, from my own knowledge of where some of the mines in our group ship their coal; particularly the Evansville group, being so small and having that one mine and one other mine closed down, naturally I am more familiar with the movement in it. I do know, of course, they have shipped occasionally tonnage to Chicago from that large mine in Evansville, which is now out of business, but I know [fol. 1865] of no other into this Northwestern territory.

Q. Did you get any reports from those mines in 1941 and 1942 to indicate they weren't shipping any coal to any of these points?

A. Reports I have seen, they are not shipping coal to these points.

Q. What were those reports?

A. Reports of commercial shipments by the Illinois-Indiana Coal and Coke Committee.

Q. Does that report show the tonnage to individual points like Rockford, Freeport, Rochelle?

A. No, sir.

Q. You couldn't get that information you stated you got from those reports, then, could you?

A. I think so.

Q. Even though it doesn't show the individual destinations, you can still get it?

A. I can still get the information given in the answer, I believe, yes, sir.

Q. In other words, you could get from those reports the tonnage from the Evansville group to Rockford?

A. No, that isn't it. No, I couldn't get the tonnage that was shipped from the Evansville group to Rockford, unless there was no tonnage shipped into that territory; then I could get it.

[fol. 1866] Q. You mean into the entire miscellaneous territory——

A. That is right.

Q. In Illinois?

A. That is right. So if there is no tonnage shown, it is obvious there has been no movement to Rockford, either.

Q. Now, you have left the mileages, average short tariff route mileages out from the origins, tariff origin points in the Evansville, Indiana, group and in the so-called Bedford, Indiana, group, in arriving at your average mileage from Indiana to the representative suspended points for the reasons that you have stated, which I understand are two: First, that the production at those points is small, and, second; that there is no tonnage or very small tonnage moving from those origins to the representative suspended points. Am I correct on that?

A. Yes, and one other additional reason, that the rates from the Evansville district in practically all of these cases before the Interstate Commerce Commission have not played any part in the adjustment. The four major Indiana groups, Brazil-Clinton, Linton-Sullivan, Princeton-Ayrshire, and Boonville are the groups that produced almost 100 per cent of the tonnage——

Q. I understand your testimony on that point, Mr. Scott, but there are rates, are there not, published in the tariffs under suspension in this proceeding from the origins in the Evansville, Indiana, group and from the origins in this so-called Bedford group?

A. No.

[fol. 1867] Q. That is true?

A. There are some rates published, not a full line.

Mr. Kuhls: Mr. Examiner, may I interpose a minute? I think I can shorten this up. In respect to the five origins shown in the Milwaukee rail tariff in the so-called Bedford group——

Mr. Morgan: Is this witness testifying?

Mr. Kuhls: Several months ago I issued instructions to our tariff department——

Exam. Trezise: Yes, this will be his testimony, if he desires to contribute it.

Mr. Stadell: Can't we have this off the record? This witness isn't sworn.

Mr. Wilkinson: No, let's have it on the record.

Exam. Trezise: He has been sworn.

Mr. Kuhls: Several months ago I instructed our tariff department to cancel those five origins on the tariff, for the reason there has not been a movement in two years, and the only thing that stopped us from making that cancellation effective was the requirement that we get I. & S. 5139 modified in order to do it. We thought it wasn't important enough to seek modification of I. & S. 5139 to bring that cancellation about; but as soon as I. & S. 5139 is disposed of, those origins will be cancelled from the tariff.

Mr. Stadell: Of course, there is nothing to interfere [fol. 1868] with putting them back as soon as this hearing is decided, is there, Mr. Kuhls?

Mr. Kuhls: I wouldn't put them back if there is to be no movement.

Mr. Stadell: And you made that same statement in I. & S. 4368 too, didn't you, Mr. Kuhls, and you never cancelled those rates out from those origins?

Mr. Kuhls: I don't recall it.

Mr. Stadell: You don't? We will get the record on that.

Mr. Wood: Will Mr. Kuhls be available for further cross-examination on his further testimony at a later time?

Exam. Trezise: If you have a serious question that you should like to ask, Mr. Wood, we will allow you to ask him right now. He is still here.

Mr. Wood: I would like to take time to consider what he said and the purport of it.

Exam. Trezise: All right, you ask him, Mr. Wood, and I think he can answer it.

Mr. Wood: I am not ready to ask a question of the witness who was brought in by surprise. I think I will have some.

Exam. Trezise: You say by surprise? Mr. Kuhls is no surprise.

Mr. Morgan: He is pretty well known but his testimony was a surprise.

Exam. Trezise: All right, let's continue, Mr. Stadell.

By Mr. Stadell:

Q. Now, Mr. Scott, did you hear the testimony of Mr. [fol. 1869] Rozene and see the exhibits that he presented with respect to the long circuitous, short tariff and shortest tariff routes from origins on the Louisville & Nashville Railroad in the Southern Illinois Group to the representative

suspended points involved in this proceeding, and his testimony that there is no coal and has been no coal produced at those origins for a number of years?

A. I heard his testimony, yes.

Q. Would you say that it would be proper to eliminate from your exhibits the average mileages over the short tariff routes from the L. & N. origins in that group to the representative suspended points, for the reason that there is no production of coal and has been no movement at those origins for a number of years?

A. No, I would not.

Q. Did you also hear his testimony to the same effect with respect to the origins, tariff origin points in Southern Illinois group on the Baltimore & Ohio Railroad, namely, that the routes from the origin points on that railroad, in that group, to these points were extremely circuitous and that there had been no coal production at those origin points for a number of years?

A. I heard it, yes, sir.

Q. Would you agree that the average mileages over the short tariff routes from those origin points in the Southern Illinois group to the representative Northern Illinois points [fol. 1870] should be eliminated from your exhibits in arriving at the average mileage from the Southern Illinois group to such points?

A. No, I would not.

Q. In other words, you wouldn't treat them the same as you treated your origin points in Indiana; that is your idea of fairness and impartiality, is it?

A. You are not comparing like things.

Q. *What* aren't you comparing like things?

A. Two reasons. First of all, you have made the statement with respect to the L. & N. and the B. & O. mines in Southern Illinois——

Q. Origin points, not mines, Mr. Scott.

A. Origin points in Southern Illinois group. Would I eliminate them because of their circuity——

Q. No, no, because there is no coal produced at those origin points.

A. That is not what you asked me.

Q. Yes, that is what I asked you. I asked you, would it be proper to eliminate those origin points in arriving at your average mileage from the Southern Illinois group to

the representative suspended Illinois points. All right, answer that question, then.

A. My answer to that would still be no, I would not.

Q. In other words, where you have no production or production of no consequence at tariff origin points in Indiana, you would eliminate those in arriving at your short tariff [fol. 1871] route mileages; but when you come over to Illinois, you wouldn't do it in here, you would continue them in and include those in computing your average mileages?

A. Mr. Stadell, there is a difference. When I speak of the Evansville group, I was speaking of that one group as a whole, and there is no production at the principal mine. There is a small production which doesn't move in this territory, as I testified; but that same thing is true at other Indiana mines.

Going back to Evansville, that is a group and I am talking about the entire group. But when you talk about the Baltimore & Ohio and the L. & N., we have the same situation at our four major Indiana groups. We have mines from which there is no production today. The rates are still there and we use them the same as we did from Southern Illinois.

Q. Would you be willing to have all of them like for like, Indiana and Illinois?

A. Not when they are a part of a group, from which group there is coal moving to the territory involved. I would not, for example, cut the Baltimore & Ohio out of the Southern Illinois group because the Southern Illinois is a group from which there is coal moving, and that is a part of the entire group setup. The same situation is true in Indiana. The very one you mentioned, the Baltimore & Ohio, produces no coal in the Brazil-Clinton District in Indiana but we leave it in that district just the same as we did in Southern Illinois.

[fol. 1872] Q. Because it happens to be the short route from that group?

A. No, that is not the reason. That would be your reason but not mine.

Q. You would continue to compute the mileages over the routes from those origins although there wasn't a pound of coal produced at those origins or shipped over that route and hadn't been for a number of years?

A. That is because it is a part of the entire group adjustment or group setup, rather.

Mr. Wilkinson: Having answered that twice, I think that is enough.

Exam. Trayise: That is twice; maybe three times.

Mr. Stadell: I think your position is clear on the record. Now, are you advocating a higher level of rates from Indiana to points in Northern Illinois than from Illinois mines to Northern Illinois, or are you advocating about the same level?

A. I am advocating a level that will reflect the differential adjustment that has existed to this territory prior to August 1, 1930——

By Mr. Stadell:

Q. Without regard to the level?

A. I am advocating rates based on those levels.

Q. You mean you are advocating rates at the present time that are based on the exact level that was in effect on August 20, 1930?

[fol. 1873] A. I am to this extent, Mr. Stadell, when you get down exact, of course, you have to take each individual figure. I am advocating rates based on the standard differentials that existed prior to that time, and I believe that if you take the State of Indiana as a whole and the State of Illinois as a whole and compare the rates, you will find them on a very comparable level.

Q. What do you mean, at the present time?

A. No, if you put in the rates from Indiana based on their standard differentials with relationship to the rates from Illinois.

Q. What I am getting at, you are not advocating any lower level of rates from Indiana to Northern Illinois than is applicable from Illinois to Northern Illinois?

A. No, I wouldn't advocate that.

Q. And is that based on your understanding or assumption that the transportation conditions from the Illinois groups to Northern Illinois are substantially the same as from Indiana mines to Northern Illinois?

A. That is one of the reasons. Transportation conditions are——

Q. Would that be the principal if not sole reason from a transportation standpoint?

A. From a transportation standpoint—oh, from the railroad standpoint, yes; except that I would qualify that to you. The railroads, of course, are primarily interested in [fol. 1874] their earnings. That is an obvious and accepted fact. And they are simply interested in an ability to move their coal in order to get those earnings.

Q. Yes, I am familiar with your theory on that, Mr. Scott.

A. Thank you.

Q. You stated, as I understood you in your direct testimony, that the present rates from the various Indiana groups to the Northern Illinois points involved are unjust and unreasonable under Section 1 of the Interstate Commerce Act.

A. I believe that is—yes, that is true.

Q. And on that basis, those rates being unjust and unreasonable should, in your opinion, be reduced to a just and reasonable basis, should they not?

A. From Indiana?

Q. Yes. You said they were unjust and unreasonable. Now, if they are unjust and unreasonable, they should be reduced to a reasonable basis.

A. My contention is they are unjust and unreasonable, relatively speaking; that is with relation to the rates from Illinois.

Q. In other words, you make a distinction between relative unreasonableness and intrinsic unreasonableness, is that right?

A. That is right. My testimony here does not purport to go into the unreasonableness of rates per se. It goes into the unreasonableness of the rates with relationship to the rates from Illinois.

[fol. 1875] Exam. Trezise: And are you now talking about the present rates or the proposed rates?

Mr. Stallell: He is talking about the present rates.

The Witness: I am talking about both.

By Mr. Wilkinson:

Q. In answer to that question, you are talking about the present rates, are you not, Mr. Scott?

A. Yes, present rates. I thought he meant——

Exam. Trezise: All right, present rates.

By Mr. Stadell:

Q. And you are here, as I understand it, supporting the railroads' 13th Section petition for an increase in the present Illinois rates, intrastate rates, to Northern Illinois. That is your position, isn't it? That is what you said?

A. No, I don't think that is my position by what I said, Mr. Stadell. I disagree with you.

Q. Are you opposing that 13th Section petition?

A. Neither am I opposing it. I am in it for the reason that I want the Commission, in settling these rates under Section 13 of the Act, and as well as under Section 3, to make rates from Indiana which are on their proper level as compared with the rates from Illinois.

Now, it is not material to me whether the Interstate Commerce Commission arrives at that by increasing the rates from Illinois, by reducing the rates from Indiana or by increasing them partially from one and reducing them par- [fol. 1876] tially from the other.

Q. Well, let's take—you say your present rates. Your present rates to these Northern Illinois points are unjust and unreasonable. Let's just take those as a starting point. That is what you said, isn't it?

A. Yes.

Mr. Wilkinson: Four times so far.

Mr. Stadell: All right, the record will show that, Mr. Wilkinson, without your interruption.

By Mr. Stadell:

Q. Now, what is the present rate—first I will ask you this: Would you say that Rockford, Freeport and Dixon, Illinois, are the three most important of the representative suspended points involved in this proceeding, from a coal-consuming standpoint?

A. Rockford and Freeport and probably Dixon. I believe those are the most important, yes.

Mr. Trezise: Are you bringing in Beloit too?

Mr. Stadell: No, I am talking about Northern Illinois.

Mr. Cardy: That is between Indiana and Southern Illinois.

Mr. Stadell: I am not talking about that. I am talking about the importance of them as coal-consuming points.

Exam. Trezise: Just Northern Illinois.

By Mr. Stadell:

Q. Now, what is the present rate from the Boonville, Indiana, group and from the Southern Illinois group to Rockford?

[fol. 1877] A. The present rate from the Southern Illinois group to Rockford is $2.10. The present rate from the Boonville group to Rockford is $2.12.

Q. And what is the average short tariff route mileage, according to your exhibit, from the Southern Illinois and Boonville groups to Rockford?

A. From the Boonville group to Rockford it is 212 miles——

Q. What?

A. 415. I am sorry, 415 miles. And from Southern Illinois to Rockford, 369 miles.

Mr. Cardy: Wasn't that 408.7, as shown by the carriers?

Mr. Stadell: 415.2, according to his exhibit.

By Mr. Stadell:

Q. Now, in the event that the Interstate Commerce Commission prescribed, as you apparently are suggesting, the suspended rate of $2.25 from the Southern Illinois group to Rockford, what rate are you suggesting from the Boonville, Indiana, group to that point?

A. $2.15.

Q. Now, let's take the Princeton, Indiana, group to Rockford as compared to Southern Illinois. What is your present rate and average mileage from the Princeton group to that point? Well, we will take Freeport in that case. The present rate from the Southern Illinois and the Princeton, Indiana, group and your average short tariff route mileages.

A. Oh, you asked for the mileages, too, Mr. Stadell?

[fol. 1878] Q. Yes.

A. The rate to Freeport from the Princeton-Ayrshire District at the present time——

Q. Is what?

A. Sorry. The rate to Freeport from the Princeton-Ayrshire District at the present time is $2.09. The average short tariff route distance is 390 miles. The rate from Southern Illinois——

Q. 390?

A. Yes. The rate from Southern Illinois at the present time is $2.10; the average short tariff route distance, 371 miles.

Q. According to my computations from those figures, the present rate from the Boonville, Indiana, group to Rockford is 2 cents per ton higher than from the Southern Illinois group, and the average distance from the Boonville, Indiana, group is 46.4 miles greater; and despite that 46½ miles greater transportation service from Boonville, you are advocating a 10-cent lower rate from that group in Southern Illinois, is that correct?

A. You have picked out——

Q. Just answer the question, will you Mr. Scott? It is a very simple answer; yes or no. I am going to come to Freeport now.

A. I am not going to answer that question yes or no.

Q. Isn't it obvious?

A. I refuse to answer the question the way you want it.

[fol. 1879] Mr. Stadell: Mr. Examiner, can't we have an answer? I asked the witness a simple question.

Exam. Trezise: The witness has a right to answer.

Mr. Stadell: He has no right to argue over a question, Mr. Examiner.

Exam. Trezise: I will agree with you, Mr. Stadell, that he——

Mr. Stadell: I want a record here.

Exam. Trezise: Let him answer the question.

Mr. Stadell: Let him answer the question. That is a simple question and he can answer yes or no. It is merely a matter of subtracting one figure from another.

By Exam. Trezise:

Q. Well, can you substract the one figure from the other with a yes or no?

A. No, he didn't ask me that question.

Mr. Stadell: All right, will you read the question, Miss Reporter.

(Question read.)

By Mr. Stadell:

Q. Isn't it yes, Mr. Scott?

A. I refuse to answer the way you want me to.

Q. Isn't the answer yes?

Mr. Wilkinson: As far as Indiana is concerned, we will concede that we are asking a differential Boonville under Southern Illinois of 10 cents per ton; that to Rockford there is a differential on Rockford of Southern Illinois under [fol. 1880] Boonville of 46 miles, or 46½ miles.

Mr. Stadell: Why don't you instruct the witness to answer the simple questions, then, Mr. Wilkinson, instead of arguing every question?

Exam. Trezise: No matter who it hurts, the answer is yes. The attorney says yes. Do you want his answer or the witness's answer?

Mr. Wilkinson: The answer is yes; as Mr. Stadell pointed out, it is obvious.

Mr. Stadell: Then why doesn't the witness answer?

Mr. Wilkinson: Then why ask the question, if it is obvious, if we are going to argue these matters?

Mr. Stadell: We are not arguing; the witness is arguing.

Exam. Trezise: That is a fact that you can figure out for yourself.

Mr. Stadell: All right.

Exam. Trezise: What are you going to ask him about?

Mr. Stadell: I will ask him another question first, if you don't mind.

By Mr. Stadell:

Q. According to my computations, the figures you gave me with respect to the average mileage and the present and your proposed rates from the Southern Illinois and Princeton, Indiana, groups to Freeport, the present rate from the Princeton group to Freeport is one cent lower than from Southern Illinois, although the average distance over the short tariff routes is 19 miles greater, and you are advocat- [fol. 1881] ing in this proceeding that the Interstate Commerce Commission prescribe a ten-cent lower rate from Princeton to Freeport than from Southern Illinois to that point?

A. That is part of what we are advocating, yes.

Q. Now, remembering your testimony a while ago, Mr. Scott, that the transportation conditions from the Illinois mines on the one hand and the Indiana mines on the other to these Northern Illinois points are substantially the same, what justification is there for these lower rates for longer mileages and more transportation service from

these Indiana groups than from the Southern Illinois group?

A. The justification is as follows——

Q. Give me the factors that go to make up that justification.

Mr. Wilkinson: Now, you just asked him. Are you withdrawing your previous question?

Mr. Stadell: No, no.

Mr. Wilkinson: I object to counsel asking two questions at a time. Either withdraw one and ask another or let the witness answer the first one.

Mr. Stadell: The second was a part of the first. I said, give me the factors that go to make up the justification.

Mr. Wilkinson: Then I object to that question because it is a dual question. Ask one question at a time.

Mr. Stadell: There is nothing dual about it.

Exam. Trezise: Why don't you just ask him why and cut [fol. 1882] out the factors.

Mr. Stadell: I don't want to have the witness start on a long argument, Mr. Examiner. I want an answer to some of these questions and not argument.

Mr. Wilkinson: Then I suggest, Mr. Examiner, if counsel doesn't want the argument from the witness, he wait and get the argument in my brief.

Mr. Stadell: I want to know, Mr. Examiner, something about this justification for the position of the Coal Trade Association of Indiana for these sub-normal rates that they are proposing in this proceeding, and something beside the broad general statement that this witness has made thus far in support of what he is advocating. I want to get the full facts, if I can, in the record.

Exam. Trezise: Now, I am trying to help you out. Can't you just confine yourself to one question and then take another question and let him answer the questions?

Mr. Stadell: I asked what his justification was for it.

Exam. Trezise: Let's get it. What is his justification?

Mr. Stadell: He has been saying there are several things. I want to know what those several things are.

Exam. Trezise: Now, instead of talking about it, Mr. Witness, will you tell Mr. Stadell what these several things are?

The Witness: I will be glad to.

Exam. Trezise: In justification of yo[illegible] position. That [fol. 1883] is clear. There is nothing——

Mr. Stadell: In justification of these rates that he has proposed.

Exam. Trezise: Exactly.

Mr. Stadell: That I have just referred to, to Rockford and Freeport.

Exam Trezise: Do you understand the question?

The Witness: Yes.

Exam. Trezise: Let him answer the question.

Mr. Stadell: I will be happy to if he will answer it.

Exam. Trezise: Well, it is up to the Examiner to say that he will answer it or not.

The Witness: In giving consideration to establishing these rates or differentials, distance is an important factor but not of primary importance. I think one of the most important factors we take into consideration in establishing rates and differentials in a group adjustment such as involved in this proceeding is the competitive conditions between the various origin groups and between the various origin railroads serving those groups.

I think another very important factor to be taken into consideration is the importance of the consumer at these destinations having several sources of supply and being free to go to those sources to secure his coal.

Those, I believe, are two of the most important factors to be taken into consideration in making rates or differ- [fol. 1884] entials in a large group adjustment in a territory such as we have here before us.

By Mr. Stadell:

Q. You have given me four factors, as I understand it: distance, competitive conditions, consumer interests and transportation conditions, that you gave me before. Is that right?

A. That sounds right, yes.

Q. Now, you have already stated, have you not, that so far as you know the transportation conditions from the Southern Illinois group on the one hand and the Princeton and Boonville, Indiana, groups on the other to Rockford, Freeport and these other Illinois points are substantially similar?

A. That is correct.

Q. And also you have, by the figures that you have given me from your exhibits, indicated that the average mileage over the short tariff routes from the Boonville and Princeton groups to those two destinations are longer than from the Southern Illinois group?

A. That is correct.

Q. That leaves us the two, namely, the competitive conditions and the consumer interests. Now, are you representing any consumer interests in this proceeding?

A. No, but the people I do represent are mighty interested in the consumer interests.

Q. Do you people pay the freight rates on the coal [fol. 1885] shipped to these destinations or do the consumers?

A. The consumers.

Q. We will come back to this consumer proposition a little later; but let's go to the competitive conditions. You say competitive conditions must be considered. Just what do you mean by that?

A. Yes, you have to sell coal in competition with other coal groups in a given market area.

Q. Let's just confine our attention for the moment to the mines in the Boonville group and the Princeton group on the one hand, the mines in the Southern Illinois group on the other. Will you tell me first—strike that; I want to ask you this:

You have expressed several opinions in this proceeding so far in your direct and cross-examination, Mr. Scott, with respect to the competitive conditions between the mines in these various groups in Indiana on the one hand and then Indiana vs. Illinois on the other. Are you expressing those opinions as an expert in selling coal, mining coal, or in just what capacity?

A. I am expressing those opinions based upon my experience of fifteen years in the coal traffic department of the railroad, and for the past three years as a traffic manager for the Indiana coal operators. I am expressing those opinions on their ability to move coal based on freight rates.

Q. Have you ever been employed by any company in selling coal?

A. No, sir.

[fol. 1886] Q. Have you ever sold any coal in your life?

A. No, sir.

Q. Are you familiar with the plants in the various towns in the destination territory involved in this proceeding or the ability of those plants to burn a particular kind of coal?

A. In a general way, from hearing what my operators have said and from hearing the operators on the railroad which I worked for talk about in the past, I have some slight knowledge of it; but I am no expert, sir.

Q. Would you be able to tell me if I were to ask you about any specific plant at Rockford or Freeport, what kind of burning equipment that plant had and what kind of coal it could use and whether coal from one group was interchangeable in that plant with another?

A. No, sir, I can't.

Q. All you know is what you have been told by some of your operators during the three years you have been over there?

A. No, that is not true.

Q. What else is your——

A. I told you that acting as traffic man in the coal business for a good many years, you just cannot help get a pretty good idea of what the competitive conditions are from a freight rate standpoint and the ability of the operators to market their coal and the railroads to move that coal from their mines to these markets.

[fol. 1887] Q. You mean what you are talking about now is your experience in checking rates and handling coal in the traffic department?

A. Solicitation, handling tonnage, and besides my experience with the Milwaukee Railroad.

By Mr. Vesey:

Q. Are you speaking of the quality of the coals or the difference in the quality of salesmanship?

A. I am speaking of the ability to move coal into a given market area from a freight rate standpoint. That is all I am speaking of. I do not sell coal, I know nothing about prices and all of those things but I do know how the coal moves and I do know what markets the groups get into, what markets they don't, where they have difficulty in competing with other groups in selling their coal. I do have that general knowledge.

By Exam. Trezise:

Q. Well, Mr. Scott, would you have the knowledge, then, to know that if there are relatively higher rates from Indiana to Illinois destinations than from Illinois origins to the same destinations, whether it would impair the movement of interstate coal from Indiana to Illinois? Would you know that?

A. Yes, sir.

By Mr. Stadell:

Q. You would know that?

A. I told the Examiner yes.

Mr. Stadell: All right.

By Exam. Trezise:

Q. Well, would it?

[fol. 1888] A. I believe it would, yes, sir.

Exam. Trezise: If that were the premise.

By Mr. Stadell:

Q. Now, you have talked about competitive conditions. Now you have amplified it somewhat. You said by competitive conditions as reflected by the movement, quantity of the movement, is that right?

A. Yes, sir.

Q. What determines the ability of two mines to compete at a given point?

A. Oh, there are many things, Mr. Stadell, and among the most important is the matter of the freight charges applicable on the coal.

Q. Well, what are the others?

A. Probably price.

Q. What else?

A. Probably quality of the coal.

Q. Probably? Don't you know?

A. Well, yes, the quality of the coal. I am no expert on this. I am just giving you my opinion.

Q. I thought you were an expert.

A. Not on the price or quality of coal, Mr. Stadell.

Mr. Wilkinson: Just a moment, Mr. Examiner. Mr. Stadell can sit there for two hours and try to heckle the

witness. The witness has stated continually he did not hold himself out to be an expert in the sale of coal. He [fols. 1889-1890] told the source of his knowledge regarding the movement of coal and the competitive conditions.

I don't like to keep interposing objections but I do think we have reached a point where Mr. Stadell has got to either take the witness's answer that he is not an expert in the sale of coal and drop it there and go somewhere else or stop cross-examining. If he is going to keep on for hours on this subject, we will never get through.

Exam. Trezise: All right, Mr. Stadell, proceed and don't heckle.

By Mr. Stadell:

Q. You mean, as I understood your answer, you said you didn't know anything about the price of the Indiana coal.

A. I said that. That is right.

Q. You don't know, then—let me ask you this, first: What determines the price that a receiver at Rockford would pay for a ton of Indiana coal as compared to a ton of Southern Illinois coal?

Mr. Wilkinson: He just said he didn't know.

Mr. Stadell: This is a different question, Mr. Wilkinson, if you will just listen.

Mr. Wilkinson: I am listening.

Exam. Trezise: All right, answer the question the way he wants it answered.

The Witness: I don't know what determines the price.

• • • • • • •

[fol. 1891] By Mr. Stadell:

Q. It is the price that the operator sets f. o. b. the mine for the coal plus the freight rate from the mine to destination. Isn't that right?

A. No.

Q. Do you understand the question?

A. Yes.

Q. You say no. Why is it "no"?

A. A lot of times there is an intermediate broker in there [fols. 1892-1893] that has a commission on there.

Q. Isn't that included in the price?

A. Not in the f. o. b. mine price.

Q. It isn't?
A. No.

Mr. Wilkinson: Well, the broker would quote it f. o. b. mines probably.

Mr. Vesey: Mr. Examiner, it seems to me we are getting the record here pretty badly muddled on competitive conditions. May I ask one question which I think might straighten it out?

Exam. Trezise: A Daniel come to judgment. Let's have the question.

By Mr. Vesey:

Q. By "competitive conditions", Mr. Scott, don't you mean simply the difference in freight rates from origin groups, and you are answering it without respect to quality of coal, ability to compete as far as salesmanship is concerned or any of the numerous factors that may go into the originally determined price by the coal operator?

A. Yes, I made it as far as freight rates are concerned.

. . . . . .

[fol. 1894] Exam. Trezise: Let's take a little recess.

(Recess taken.)

Exam. Trezise: All right, gentlemen, when you are ready we will proceed. Are you finished, Mr. Stadell?

Mr. Stadell: No, I have some other questions.

Exam. Trezise: Proceed.

By Mr. Stadell:

Q. As I understood your answer to the question that Mr. Vesey asked you, it was that in expressing your opinion as to the competitive conditions between the Indiana mines or between the Indiana mines on the one hand and the Illinois Mines on the other, that you based that opinion on the differentials or differences in the rate and did not base it on the differences in the quality of the coals or the price of the coals?

A. That is right.

Q. In other words, in arriving at that opinion or the opinions that you have expressed on that subject, you have given no consideration whatever to the differences in the

quality of the coals produced in the various Indiana groups or in those groups on the one hand and the Illinois groups on the other?

A. I would probably have to answer that this way, Mr. Stadell. I know that the difference in the quality exists but I can't tell you any more than that.

Mr. Stadell: Will you answer my question now, please? Will you read the question, please, Miss Reporter.

[fol. 1895] (Question read.)

The Witness: That is correct.

By Mr. Stadell:

Q. And would your answer be the same if I asked you what weight you gave in arriving at that opinion or the opinions that you have expressed, to the f. o. b. mine prices charged by the mines in the various Indiana groups on the one hand and those mines—the mines in the Indiana groups on the one hand and the Illinois mines on the other?

The Witness: Read the question. It seems to me that is a contradiction of the previous question.

Mr. Stadell: Strike that; let me reframe that question. I will just ask you this, Mr. Scott:

Q. In arriving at your opinions that you have expressed here with respect to the competitive conditions as between the Indiana mines, or as between those mines on the one hand and the Illinois mines on the other, did you give any consideration or weight to the f. o. b. mine prices of the Indiana coal or of the Illinois coal or to the costs of production at those mines in Illinois or Indiana?

A. No, my opinion was based on the transportation costs or freight rates affecting the ability of the various groups to market their coal in a given market area.

Q. When you say transportation costs, you don't mean the amount of money that it costs the railroads to handle this coal from any mine in Indiana or Illinois to the North-[fol. 1896] ern Illinois territory, but you refer only to the freight rate?

A. The charges resulting from the application of the freight rate, yes.

Q. This morning you stated that the coal produced in Indiana for the most part was substantially similar. What do you mean by "substantially similar"?

A. Oh, the coal, the different veins of coal produced in the different districts of Indiana are somewhat similar, and the quality of the coal itself is generally similar. I am no expert on that, Mr. Stadell.

By Exam. Trezise:

Q. Do you know people burn the coal from both places?
A. Yes, I do. I know if they don't buy it from one group they will buy it in the other.

By Mr. Vesey:

Q. You mean regardless of freight rates?
A. I mean when they have to. I know that for a fact.

By Mr. Stadell:

Q. How many seams of coal are produced in Indiana?
A. Well, there is a third vein, fourth vein, fifth, sixth, little seventh; a vein known as Brazil Block, and a very slight tonnage of a block I know nothing about, known as Minscheil.

By Mr. Wilkinson:

Q. There is also a coal known as Glendora that is a little different than the others, isn't there?
A. Yes, there is also a Glendora coal. Well, I believe that [fol. 1897] the official name of that coal is Glendora.

Mr. Wilkinson: All right.

By Mr. Stadell:

Q. You made some statement to the Examiner that if the differentials or the rates which you are advocating from the Indiana groups to these destinations, in relation to those from Illinois, were not established, that that would affect the movement of the coal. Can you take a typical plant at Rockford, Illinois, or Freeport or any other point in that territory that you desire to select and demonstrate for the benefit of the record why the operator mines in the Princeton group would not be able to complete for the coal used in that plant with the Southern Illinois mines, if the freight rates from the Princeton and Southern Illinois groups were made the same?

Mr. Wilkinson: I object to that question. That would take not only an ability to sell coal and know the selling price, but he would also have to be a combustion engineer to determine for any particular plant what coal could be used in that plant.

Exam. Trezise: You are saying your witness is not qualified to answer that question?

Mr. Wilkinson: I don't think the witness is qualified to answer that question as to a particular plant.

Exam. Trezise: Let the witness give his answer to it if he can.

[fol. 1898] The Witness: No, I don't know enough about the burning equipment and the quality of coal and how it is used, its combustion and so forth, to answer that question.

By Mr. Stadell:

Q. Well, you have no definite means, then, of demonstrating to the Examiner or on the record that the mines in the Princeton, Indiana, group would be unable to compete with those in the Southern Illinois group at Rockford if the rates from those two groups were based on the mileages from the groups and made the same?

Mr. Wilkinson: Do you mean based on mileage from the group or do you mean made the same?

Mr. Stadell: Both. The mileages are about the same.

Exam. Trezise: If the mileages are about the same; assume they are. Can you answer the question?

The Witness: I would like to have that question again, please, Miss Reporter, if you don't mind.

(Question read.)

The Witness: In my general knowledge of the movement of coal into the territories on a rate that would be the same, that it would be very difficult if not impossible for the South groups, from the Princeton-Ayrshire or Boonville group to complete with Southern Illinois. I cannot give you any detail. I have paid no particular point to bringing that out.

Mr. Wilkinson: May I interpolate a question now, Mr. Stadell?

[fol. 1899] Mr. Stadell: Yes, I would like to understand the witness. I would like to understand his last answer.

By Mr. Wilkinson:

Q. You do know, Mr. Scott, what happened when the rates of the Milwaukee Railroad from the Linton field were increased in 1932, the relationships, so that those were practically on a parity with the rates from Southern Illinois, don't you?

A. Yes.

Q. And the traffic via the Milwaukee to Rockford dried up and disappeared?

Mr. Stadell: Well, I object to that statement. There is no evidence of that, Mr. Examiner. I am asking him if it did or it did not and you are testifying. You are putting the words in the witness's mouth, Mr. Wilkinson.

Mr. Wilkinson: I asked your permission to ask a question.

Mr. Stadell: I didn't give you permission to tell what the answer was.

Mr. Cardy: I think that should be stricken from the record.

Mr. Stadell: All right, I do too. I move it be stricken.

Exam. Trezise: All right, strike it out.

By Mr. Stadell:

Q. All you know about the competitive conditions is that there is a certain volume of tonnage moving and that there is a certain difference in freight rate. That is what your opinions have been based on, isn't it?

A. Oh, I think it goes a little further than that, Mr. Sta- [fols. 1900-1901] dell. You have got to talk a little more about it than those two statements. I know the traffic moves, I know the freight rates, I know the result of the freight rates and the traffic that moves, combined.

Q. But you can't pick out any point, either in the Northwest territory that is shown on one of your exhibits, or in the Northern Illinois territory involved here, and show a single instance where any mine in the Princeton, Indiana, group or in the Boonville group would be unable to compete with the mines in the Southern Illinois group if the rates from the Princeton and Southern Illinois groups were made the same and the rates from the Southern Illinois and Boonville groups were made about the same?

A. Yes. I can take any of these points in the Northwest and say that from my knowledge and experience in the coal

business—in the coal traffic business during the last fifteen years, that if the Boonville or Princeton rates were made on the same—were made the same as Southern Illinois, that it would very definitely, materially affect the ability of those operators in the Princeton-Ayrshire and Boonville group to sell their coal into the Northwest territory in competition with Southern Illinois.

[fol. 1902] By Mr. Stadell:

Q. How much higher or lower is the parity from the Princeton, Indiana, group than from the Southern Illinois group to Rockford and Freeport?

A. To Rockford, the Princeton-Ayrshire group—wait a minute. To Rockford, the Southern Illinois rate is one cent [fol. 1903] higher than the Princeton rate. To Freeport it is one cent higher from Southern Illinois than from Princeton-Ayrshire.

By Exam. Trezise:

Q. Except via the Milwaukee, is that right?

A. No sir. The Princeton-Ayrshire group, Mr. Examiner.

Exam. Trezise: Oh, the Princeton-Ayrshire. Thank you.

By Mr. Stadell:

Q. Now, for how long, for how many years has the present rate from the Princeton group been but one cent higher than from the Southern Illinois to those two points?

A. I believe about thirteen years.

Q. Can you tell me of any piece of business at either of those two points that the mines in the Princeton group have lost to the mines in the Southern Illinois group as a result of that competitive rate adjustment?

A. I cannot name you a specific piece of business, no, sir. I haven't gone into it in that detail. If I did know it once upon a time I have forgotten it now.

Q. Well, just what experience——

Mr. Vesey: Let me follow that.

Mr. Stadell: All right.

By Mr. Vesey:

Q. Does that answer assume that there is coal moving from the Princeton group to Rockford?

A. Yes, sir.

Mr. Stadell: There is. The record shows that. The railroads' exhibits show that; I am sure they do.

By Mr. Stadell:

Q. Would your answer be the same if I asked you about [fol. 1904] the Boonville and Southern Illinois groups?

A. Yes, sir.

Q. Can you name any piece of business that the mines in the Princeton or Boonville groups have lost under the present rate adjustment to the points in Northern Illinois to which the rates from Princeton and Boonville are about the same as from Southern Illinois during these past thirteen years?

A. Again I say I cannot name a specific piece of business.

Q. You didn't think it was necessary to ascertain those facts before expressing all these opinions that you have expressed about the inability, so-called, of the mines in the Princeton-Boonville group to compete with those in Southern Illinois if your rates were substantially the same in the same groups?

A. Not as long as I had the general knowledge I had, I didn't think it was necessary to go into the specific piece of business here.

Q. And in your general knowledge and the long experience you have talked about here, you can't pick out any case, either in the Northwest or in Northern Illinois, where if the rates were made the same from Princeton as from Southern Illinois, that the Princeton mines wouldn't be able to get into the plants at that point and sell their coal in competition with coal from Southern Illinois?

A. A specific piece of business I cannot name, for the fourth, fifth or sixth time.

[fol. 1905] Q. Let me ask you this: As I understand it, although you don't know anything about the variation in the quality of the—strike that.

Exam. Trezise: Just ask him a question without telling him what he knows or what he doesn't know. Can you do that, Mr. Stadell?

By Mr. Stadell:

Q. There is, Mr. Scott, or is there a variation, considerable variation in the quality of the coal produced, we will say, by the mines in the Princeton group?

A. By the different mines in the Princeton group?

Q. Yes.

A. I couldn't answer that. From my general knowledge it is approximately similar coal but——

Mr. Stadell: I move to strike out the answer, the last part of it. If he doesn't know he doesn't know.

Exam. Trezise: You asked him.

Mr. Stadell: He said he didn't know, then he goes ahead and he says, based upon his general knowledge. Now, if he doesn't know he doesn't know, based upon his general knowledge or anything else.

The Witness: You are so specific, I try to give you a specific answer.

Exam. Trezise: The witness said he had a general knowledge but he doesn't know the answer to your question.

By Mr. Stadell:

Q. Now, you referred to Southern Illinois as the base [fol. 1906] group. Why do you think that that should be the base group, other than the fact that the Commission recognized it was a base group in some cases?

A. I will explain that if you will bear with me again to state that I have spent a great many years in the Milwaukee Railroad's traffic department, coal traffic department, and as such I naturally handled freight rates——

Q. Do you have to reiterate your long experience every time?

A. You seem to question it so much, Mr. Stadell, that I like to sort of bring it out.

Q. Yes, I know you do.

A. But the fact is this——

Exam. Trezise: May I ask Mr. Stadell if he is placing some great significance on whether or not one group is a base group or another group is the base group? You do place a significance in the determination or the nomenclature that you apply to a particular group?

Mr. Stadell: Well, I think so, Mr. Examiner. I wanted to get the witness's reason as to why the Southern Illinois

Group should be the basic group for the purposes of the rates in this proceeding.

Exam. Trezise: Then I understand you. The answer is yes.

Mr. Stadell: That is right.

The Witness: Is there a question pending?

Exam. Trezise: Yes, about the base group. Read the [fol. 1907] question; his question, not mine.

(Record read as follows: "Now, you referred to Southern Illinois as the base group. Why do you think that that should be the base group, other than the fact that the Commission recognized it was a base group in some cases?")

The Witness: In addition to the fact that the Commission recognized it as the base group in some cases, the railroads have, in my opinion, recognized it as the base group. Going back to 1918 or 1920, in there when the first percentage increases were granted, the rates were first granted, I believe, a full percentage, the same percentage from all the mines; and then later on the differentials were restored by using Southern Illinois as the base group from which to apply the increase or, as on July 1, 1922, to apply the ten per cent reduction. Whatever was done in the rates from Southern Illinois was done in the rates for practically all the Illinois groups and all the Indiana groups.

In addition to that, taking the Midland Electric case as an example, 26558, the Interstate Commerce Commission prescribed rates from Fulton County to Iowa as the base group; they made rates from Southern Illinois a differential over Fulton County. And in adjusting the rates from the Indiana groups, in order that that—to continue the differential relationship to the State of Iowa, they made the same changes in the rates from the Indiana groups as were made from Southern Illinois, whether those changes were reduc- [fol. 1908] tions or increases.

They did the same thing in the South Dakota case. They made the same changes from Indiana as were made from Southern Illinois. They have done it in other cases. I would think that the railroads over the past twenty years have demonstrated very forcibly that Southern Illinois is the base group in Illinois.

By Mr. Stadell:

Q. In other words, you are merely telling me that because the railroads have recognized it as the base group, that is the principal reason why it should be the base group?

A. No, I wouldn't say merely, Mr. Stadell. I was saying that is the way our rates have been taken care of. They have adjusted our rates for the past twenty years, and so has the Interstate Commerce Commission, and have made our rates with relation to what was done from Southern Illinois.

Q. That is what I say. Just because that has been done, that is the only reason it should be continued, is that right?

A. Definitely.

Q. Would you say also that consideration should be given to the volume of the movement from the various groups in determining what should be the base group?

A. No, sir, I don't believe it should.

Q. In other words, you just base it on what has been done?

A. If a good and sufficient reason has been recognized as such, that is true.

[fol. 1909] Q. That is your only reason?

A. Your question is the same question; my answer must still be the same.

Q. Now, has there been any change in the boundaries or the mines that go to make up the groups in Indiana during the past several years?

A. Not in the past several; not in the past twelve years, thirteen years, no.

Q. Weren't a considerable number of the mines in the Boonville group placed in the Princeton group for rate-making purposes about 1930?

A. Yes, that was more than twelve years ago, and there were some of the mines that were placed in the Princeton-Ayrshire Group.

Q. Well, the majority, that is from the standpoint of production, were put from the Boonville to the Princeton——

A. Yes, there weren't very —. mines in the Boonville group and by putting the majority in there, you still wouldn't have so many.

Q. But the production of the mines that *were* shipped was quite substantial, was it not?

A. I can't answer that question now, Mr. Stadell. I don't know what they were producing then, offhand.

Q. Well, they shifted practically all of the mines except one or two, or one mine of consequence, from the Boonville to the Princeton group at that time, did they not?

A. Yes, but I still would like to find out just how many [fol. 1910] mines they were in there, not origin points, but how many mines they were in there at that time, before I would say it would be a considerable number or not.

Q. And in the last year or so the railroads, after having placed the large new mine of the Tecumseh Coal Corporation in the Boonville group for rate-making purposes, shifted it over to the Princeton group, did they not, with respect to the rates on certain railroads?

A. With respect to the rates on certain railroads, yes.

Q. Yes.

A. Just how many of those railroads were involved in the proceeding, I cannot say, if any.

Q. Now, as I understand your theory that you are advancing in support of the rates that you are proposing here, it is this: that the rates from the Southern Illinois Group to the Northern Illinois points involved, or the propriety of those rates, should be measured by the mileage from that group to those points?

A. That is one way of measuring them, yes.

Q. How else would you measure it? What else are you advocating that the Commission use in measuring the propriety of the suspended rates or the present rates from that group to the Northern Illinois points involved?

A. As far as this proceeding is concerned, I have shown them, as to my exhibits, as to mileage and percentage of the [fol. 1911] various scales; and also they should take into consideration the differentials that have existed for a good many years in arriving at the resultant differentials that should be prescribed.

Q. Just looking at the present and suspended rates and rates that you have advocated that the Commission prescribe from the Southern Illinois group to the Northern Illinois territory involved, it's your opinion that those rates should be measured, or their propriety should be measured solely by the average mileage and the transportation conditions?

Mr. Wilkinson: I object. That is making a statement that the witness didn't testify on direct. He is predicating a question by way of a positive statement that the witness did not testify to on direct examination.

Exam. Trezise: Well, just so the witness isn't misled.

Mr. Wilkinson: I still think we should have our questions framed properly, Mr. Examiner.

Mr. Stadell: All right, strike that question and I will ask him this question:

By Mr. Stadell:

Q. What have you presented to the Commission other than the mileage as a measurement of the present and suspended rates from the Southern Illinois group to Rockford and Freeport and these other points?

A. I have presented to the Commission in evidence here the relationship in rates that existed under the standard differentials prior to 1930 when disrupted by the order of [fol. 1912] the Illinois Commerce Commission.

Q. You understood my question, Mr. Scott. I am talking about the level of the rates from the Southern Illinois group to these points.

A. The level, Mr. Stadell, to which you are referring was a part of the evidence offered by me to justify what we are asking, and I think in order to say what purpose the level serves, I must preface it by a statement of what we are asking for and that level proves.

I am not asking the Commission to base rates on levels. I am asking the Commission to give consideration on what we are seeking here, showing that the level of the rates from Indiana is on a higher basis than the level of the rates from Illinois, whether you take the present or the proposed rates.

Q. That is based on your exhibits?

A. Definitely.

Q. In measuring the level or the reasonableness of the rates from the Southern Illinois group to these Northern Illinois points, is it your position that only mileage should be used, or should some other factors be considered, leaving out the question of the differentials for the moment?

A. To prove what we are seeking, in order to substantiate what we are seeking in a rate adjustment in this proceeding, I think that percentages of scales conclusively show that our demands are not unreasonable. I think that

[fol. 1913] our earnings per car and per car mile demonstrate that it is not unreasonable.

Q. What do you mean, it is not unreasonable? The rate that you are advocating from the Boonville group, for example?

A. That is right; with relation to the other groups.

Q. And you said that if the suspended rate from Southern Illinois of $2.25 was approved or prescribed that, to Rockford, for 369 miles, that you wanted a rate of $2.15 per ton from the Boonville group for 415 miles, is that right?

A. That is correct.

Q. Did you consider that rate of $2.15 per ton from the Boonville group to Rockford for 415 miles of transportation service to be a just and reasonable rate?

A. At no time have I considered any particular rate in this particular adjustment.

Q. Just confine your attention now to that one rate.

A. You asked me what I considered.

Q. I didn't ask you that.

Mr. Cardy: I object to that question unless Mr. Stadell takes into consideration the size of the Illinois group, Southern Illinois group vs. the Boonville group. Otherwise the questions are not comparable.

Exam. Trezise: Well, I think the witness can answer that, if that is his answer.

Mr. Stadell: All I asked him, Mr. Examiner, — if he thought that the rate that he is proposing of $2.15 from [fol. 1914] the Boonville group to Rockford, for 415 miles, was a reasonable, proper rate.

Exam. Trezise: And he surely can answer that question.

The Witness: I can answer.

By Mr. Stadell:

Q. You can't answer?

A. I can.

Q. Oh. Just in and of itself, now.

A. Yes. In and of itself, just to Rockford in the particular instance you gave.

Q. All right.

A. To Rockford, Illinois, from the Southern Illinois group, for a spread in distance between—

Mr. Stadell: Now, just a minute. I object to the witness going over that again. He has been over that fifteen times.

The Witness: You are asking me the question again.

Mr. Stadell: No, I didn't.

The Witness: Then somebody else did.

By Mr. Stadell:

Q. Mr. Scott, can't you answer questions?

A. Yes.

Q. Will you answer them?

A. I am sorry you don't get the answers you want, but you asked me.

Mr. Stadell: Mr. Examiner, can't we have an answer?

Exam. Trezise: He said in and of itself. Now, answer it the way he asked it. I don't know whether you can tell a rate is intrinsically reasonable or not. I haven't found [fol. 1915] anybody else that could do it very well, unless you can compare it with something else.

Go ahead and give your answer.

Mr. Stadell: If he doesn't know, let him say so.

The Witness: Let me give my answer, will you?

Mr. Stadell: I object to this witness going over the same thing fifteen times, Mr. Examiner, which is not responsive to the question.

Mr. Cardy: We haven't heard anything.

Exam. Trezise: The Examiner will determine——

Mr. Stadell: He has an attorney. Will you please let his own attorney take care of him, Mr. Cardy.

Exam. Trezise: The Examiner will determine whether it is responsive. Now, let him answer the question.

The Witness: The carriers have a rate to Rockford of $2.10 from Southern Illinois for a distance of 312 miles from a point in the Southern Illinois group, and also have one for 409 miles from a point in the Southern Illinois group.

By Mr. Stadell:

Q. How many miles?

A. 409.

Q. What was the first one?

A. 312: Now, the difference between those two mileages is 96.9 miles, and you have the same rate applying from those two points in a group, even though the difference in short tariff route distance is 96.9 miles. I can't see any [fol. 1916] thing wrong with that, nor can I see anything wrong with the fact——

Q. What exhibit are you referring to, Mr. Scott?

A. My Exhibit 63.

Q. 63, what page?

A. 2, Rockford, Illinois.

Q. And the mileages from all origins, including the ones that you have given, are considered in arriving at the average from that group, aren't they?

A. That is correct.

Q. In comparison with the average mileage from the Boonville group?

A. That is correct.

By Exam. Trezise:

Q. Then your answer wasn't the answer to his question; but you answered by merely saying by these various comparisons, not in and of itself.

"In and of itself," as the Examiner understands it, is what degree of profit that the railroad can make out of that particular rate by hauling traffic of that distance, but your answer is by comparison.

A. Yes, sir. That is the only way I know of, is by comparison.

Exam. Trezise: Well, he doesn't know the answer to your question.

Mr. Cardy: Well, Mr. Examiner, didn't he say that the present rate from Boonville, which is ten cents under Southern Illinois, is a reasonable rate based upon these compari- [fol. 1917] sons of distances which he put in the record from Southern Illinois? That is what I understood his testimony to mean.

Exam. Trezise: I think he said that too, Mr. Cardy. Will you read that last statement Mr. Cardy made, Miss Reporter?

(Record read.)

The Witness: Mr. Examiner, while I have the carriers' exhibits here, the figures may vary a little bit, but the

short-line distance to Rockford is 330 miles. The long-line distance from Southern Illinois to Rockford, the most distant line is 558 miles.

By Exam. Trezise:

Q. You mean the longest?

A. Yes, and the longest from the Boonville group is 408 miles; and based upon those computations, I understand that he said that the Boonville rate was the proper rate.

The Witness: Right.

By Mr. McElroy:

Q. That is, you got the spread between the mean and the extreme distance in the Southern Illinois group and assumed that since that spread was so much, that an additional mileage, Boonville over Southern Illinois, would justify the Boonville rate?

A. Yes, and I would like to make this further observation——

Q. Is that your theory?

A. May I correct that statement you made, Mr. McElroy, first. You said the extreme distance. I do not mean the longest possible haul from the Southern Illinois group. I mean the longest haul via the short tariff routes from [fol. 1918] the Southern Illinois group. I want to make that clear.

Q. Now, just following your theory and using the Springfield, Illinois, group as a base, you practically bring Southern Illinois on the Springfield rates, don't you, since the Springfield group is one of the largest groups, and Southern Illinois is one of the smallest in the Illinois groupings?

A. I wouldn't say Southern Illinois was one of the smallest. I would say Springfield is the largest, and the others are about the same.

Mr. Cardy: Mr. Examiner, there is practically only one mine there, Boonville.

Mr. Stadell: Are you going to testify, Mr. Cardy? If you are, I suggest you be sworn.

Mr. Vesey: Is this off the record?

Exam. Trezise: No, this is on the record; and the witness, the Examiner understands it, said he didn't place any undue confidence or didn't feel that he was sufficiently to-

tified by showing these extreme distances and that he wasn't relying on those.

By Exam. Trezise:

Q. Didn't you say something of that kind?

A. I don't understand that, what you mean, Mr. Examiner.

Q. You have an exhibit in which you showed the extremes; not the means. You showed only the extremes.

A. Between distances?

Q. And somebody asked you why you showed them and [fol. 1919] you said, well, you just put them in there because you copied them out of the railroads' exhibits.

A. No, those are my own figures. They are not taken out of the railroads' exhibits.

Q. You mean the longest distances and the shortest distances, didn't you have an exhibit of that kind?

A. Yes, sir.

Q. Maybe that was somebody else.

A. No, I have an exhibit, but it is the longest distance from any point in the Southern Illinois group, the longest distance from any point in the Springfield group and Indiana groups; shortest distance from any points in those groups to a given destination via the short tariff route distances; via all distances, not via the longest, as the railroads have shown. Mine is different.

Q. Well, I will go along with you on that if you want to make that correction, but I understood you to say that you have shown those things but that wasn't the real thing that you relied upon to justify your contentions here, but that you were relying upon these short tariff routes.

A. Yes, sir, and that is all I have used, is short tariff routes. Those are short tariff routes, Mr. Examiner, that I quoted.

By Mr. Stadell:

Q. But they are not the average?

A. No, they are from each individual point.

[fols. 1920-1921] Q. You shifted from one to the other?

A. No, I didn't shift.

* * * * * * *

[fol. 1922] By Mr. Stadell:

Q. On page 3 of your prepared statement, Mr. Scott, you refer to the number of tons of coal shipped from the Indiana mines to certain destinations during an eight-month period, April 1 to November 30, 1942. What destinations [fol. 1923] did that tonnage move to?

A. It moved to most of the destinations involved in this territory; involved in this proceeding, I mean.

Q. You haven't the names of those specific points?

A. All the destination involved in this territory, Mr. Stadell. That is to which we ship coal.

Q. You mean within the boundary, the line that was shown on your map, Exhibit No. — what was that, showing the outlines, the destination territory?

A. Exhibit No. 40. 39; I beg your pardon.

Q. 39?

A. 39.

Q. From what source did you obtain those figures?

A. From the statements submitted by the operators, members of our association.

Q. The figure that you gave, then, would not include the tonnage shipped by mines in Indiana that were not or are not members of your organization?

A. If there is any—no.

Q. Several times you emphasized the fact that the Illinois Central established the same basis of rates from mines on its line in the Linton-Sullivan Group to Rockford, Freeport and intermediate points as were applicable from mines on the Milwaukee. Do you consider the Illinois Central an important carrier from Indiana or from that group? [fol. 1924] A. It is not the most important but I consider it an important carrier and it is developing into a much more important carrier at this time.

Q. You mean you anticipate that the tonnage over that road to this Northern Illinois territory from the Linton-Sullivan Group will undoubtedly substantially increase?

A. No, I don't mean that. I don't know what will be done, of course. I mean that the tonnage that will be shipped from mines located on that railroad will increase, or that the production of mines on that railroad, however, will increase.

Q. So that you do consider it an important carrier from the Linton-Sullivan Group?

A. They are all important, yes, sir, every one of them.

Q. Now, in answer to a question by Mr. Wilkinson at page 31 of your prepared statement you stated that the only carriers serving mines in Indiana and Southern Illinois were the C. & E. I. and the New York Central. That isn't correct, is it, in view of your statement that the Illinois Central serves the Linton-Sullivan Group?

A. No, the Illinois Central serves mines in Southern Illinois, and my comparison was lines—the majority of the groups in Indiana as compared with Southern Illinois, that serves more than one group.

Q. You gave some figures at page 5 of your prepared statement purporting to represent the investment in coal [fol. 1925] mining properties in the Brazil-Clinton, Linton-Sullivan, Princeton-Ayrshire and Boonville, Indiana groups. Can you tell us, just briefly, what those figures represent? Do they represent the original investment or do they represent the original investment minus depreciation and depletion, or just how are they arrived at?

A. The way I would have to answer that is that the figures were submitted to me from reports submitted by our operators, showing the investment in the mines in the States. Now, I really couldn't say, Mr. Stadell, just whether that is less depreciation or how the final figure is arrived at. I am not sure of that. It is my understanding, though, that it represents their investment at the present time; as in the year 1942, I should say.

Q. Does the figure for the Princeton-Ayrshire Group include the investment in the large new strip mine of the Tecumseh Coal Corporation, or was that omitted?

A. No, that is in there. In the Princeton-Ayrshire Group, you said?

Q. Yes.

A. Yes, that is in there.

Q. Have the mines in Indiana made any effort during the past ten or twelve years to improve the quality of their coal through the installation of improved preparation plants and washing plants?

Mr. Cardy: That is objected to as immaterial. It has [fol. 1926] no bearing on the level of the rates.

Mr. Stadell: It certainly has a lot of bearing, Mr. Cardy, in view of Mr. Scott's testimony. The rates should be made——

Mr. Cardy: It really gets into the question of cost, and I object to it in the first instance.

Mr. Stadell: It is on the question of competitive conditions that Mr. Scott has talked about all through his testimony. As a matter of fact, his entire case is based upon nothing but competitive conditions.

Exam. Trezise: Mr. Stadell, your thought is that that is part of the competitive situation that would enable one group to compete with the other?

Mr. Stadell: That is right.

Exam. Trezise: A commercial condition existing?

Mr. Stadell: That is right.

Exam. Trezise: Oh, I think we will let him answer the question, if he knows the answer to it.

The Witness: May I have the question again, please, Miss Reporter?

(Question read.)

The Witness: They not only have made an effort, they have done that.

By Mr. Stadell:

Q. And has that been general among the mines in the various Indiana groups, or has it been confined to any one group?

[fol. 1927] A. I would say from my knowledge that it has been more or less of a general improvement, general thing.

Q. And during what period has that taken place, particularly?

A. I couldn't give the period. I think it has been continuously going on. It is a practice amongst all mines.

Q. What I mean is, it has been during the last ten or twelve years, hasn't it?

A. It has been happening during that as well as previous to that. I wouldn't say. I don't know a lot about the previous ten years as to the actual mine operations, Mr. Stadell, that is the actual mine operations.

Q. Could you tell us how many of the mines in Indiana at the present time have coal-washing plants?

A. Approximately 25 to—oh, approximately 25 to 35; I don't know the exact number.

Q. And how many mines are there in Indiana?

A. Oh, all told, there *is* probably about——

Q. Rail served, I am talking about.

A. All told there *is* about 50 mines, and practically all the large mines have washing plants.

Q. Practically all the large mines have washing plants?

A. Yes, sir.

Q. And those have been installed during the past ten or twelve years?

A. Or before——

Mr. Wilkinson: Mr. Scott has answered that he didn't [fol. 1928] know when they started to install them. I don't think that he should be asked the same question when he said he didn't know when they started, to try to pin him down to a date that, historically and off the record, is not a correct date.

By Mr. Stadell:

Q. Do you know of any mine in Indiana that had a washing plant prior to ten years ago?

A. I know there were some. I couldn't name them, but I know there were some that had it prior to ten years ago, yes, sir.

Q. You can't name any now that had a plant, washing plant, prior to ten years ago?

A. I would have to look at the record. Some of those mines might have had it nine years, some eleven; I don't know, Mr. Stadell. You are tying me down to a specific date.

Q. I am not confining you to ten years; I said ten to twelve years, and your answer is that you couldn't name any that had a washing plant prior to that time.

A. There are some but I can't name the mines.

Mr. Wilkinson: Off the record.

(Discussion outside the record.)

Mr. Cardy: Mr. Examiner, I assume the same situation in Illinois, when they improved their conditions in Indiana they improved them similarly in Illinois. I can't see the pertinency of this testimony unless they are going to put in what the others are.

Mr. Stadell: Put it in, if you want them in.

[fol. 1929] Mr. Cardy: I don't want them in.

Mr. Stadell: You don't?

Exam. Trezise: That evidence could be used, as the Examiner understands it, by undertaking to show that it was not the rate situation but it was some commercial condition that enabled one person to sell coal and the other fellow might not be able to sell. The freight rate might have nothing to do with the transportation.

Mr. Cardy: In order to make that evidence competent, we will have to have that evidence in Illinois, so we can compare them.

Exam. Trezise: That is correct.

Mr. Stadell: Then put it in.

Mr. Cardy: I just want to be understood, I have no objection to this evidence going in, but I really think it is immaterial unless it is connected up.

By Mr. Stadell:

Q. Have you your Exhibit No. 66, Mr. Scott?

A. Yes, sir.

Q. You show certain points intermediate there to Beloit, Wisconsin, such as Roscoe Siding, Latham Park, Shirland, and all that. Can you tell me how much coal is consumed at those points?

A. No, I haven't made a study.

Q. Do you know whether any is?

A. Yes, I do know there is some.

Q. How much is consumed there?

[fol. 1930] A. I said I didn't know.

Q. You don't know?

A. You asked me if I knew how much coal; I said no. You asked me whether there was any, I said yes.

Q. Where did you get the information there was some?

A. My knowledge of the coal traffic business.

Q. You can't give us the tonnage that moved during any year to any of these points?

Exam. Trezise: He cannot, he said.

Mr. Stadell: All right. That is all I have.

Exam. Trezise: Do we have further questions?

Mr. Cardy: I have one or two questions.

Mr. Marks: Mr. Examiner, I have one or two questions.

Exam. Trezise: Mr. Cardy spoke first so I guess we will let him go ahead, Mr. Marks.

By Mr. Cardy:

Q. Mr. Scott, in this proceeding, the evidence up to this time, as I get it, we have two general adjustments, that is, namely, the adjustment of rates from Illinois on the one hand and Indiana on the other, to points in Northern Illinois, where you have a fixed and established differential adjustment; in other words, mines located approximately 150 miles south of this destination territory, including Western Kentucky, I might say, are on a differential basis. That is true, is it not?

A. In some cases, yes.

Q. Now, in addition to that adjustment we have short-haul [fol. 1931] rates from the mines in Northern Illinois to points in Northern Illinois, where the hauls are relatively short, and I believe you will agree with me they are not on a fixed differential basis, is that not true?

A. Well, for the——

Q. Well, take to DeKalb. Just refer to Carriers' Exhibit 4, Section—I think it is 5; page 5. Section 5, page 4—page 5. That exhibit shows that we have distances varying from 72 miles up to 130 and rates varying from $1.29 up to $1.50.

You do not intend to convey the idea that each one of those destinations, this destination, that there should be a fixed and established relationship in the rates with the other groups?

A. No, I don't contend that here.

Q. Can you state what is a general practice here as to where we should draw the line as to short hauls, which we generally know as short haul rates? What is your adjustment in Indiana? Isn't that about 130 miles?

Mr. Wilkinson: Just a minute. I object to that question, Mr. Examiner. He testified nothing on his direct examination as to where a rate adjustment began and where you had short-haul rates; beyond the scope of his direct examination.

Mr. Cardy: All right, maybe I can shorten it.

Exam. Trezise: Can you develop that from some other witness who testifies about it?

Mr. Cardy: Let me just ask him one other question on this particular point:

[fol. 1932] By Mr. Cardy:

Q. Can you name any rates from the Northern Illinois Field involved in this proceeding, Northern Illinois District, that *is* at the present time in violation of Section 13 and casts an undue burden on interstate commerce? I mean so far as the shippers of Indiana are concerned.

Mr. Wilkinson: Isn't that calling for a legal conclusion, Mr. Examiner?

Mr. Cardy: There are certainly a lot of legal conclusions in this proceeding, in these various briefs that we have filed.

In other words, here is a shipper in Indiana using interstate rates. I want him to point out one rate from the mines in Northern Illinois to destinations involved here that is an undue burden on interstate commerce, as far as his shipments are concerned.

Exam. Trezise: Well, can you tell what would be a burden on interstate commerce? Let the Commission determine whether it is undue. Or you can give your opinion about an undue, if you want to. Can you answer the question?

Mr. Wilkinson: We have shown the facts as to the situation. I think that is all that the witness could be called upon to answer.

By Mr. Cardy:

Q. Can you state where you have lost any shipments, or where the rates from Northern Illinois materially affect the movement from points in Indiana, one destination, and what the adjustment should be?

A. No, that would require a lot of study to pick out one [fol. 1933] point, pick the district of Northern Illinois, from Indiana.

Q. In other words, Mr. Scott, I understand your contention is as far as the rates from Northern Illinois, they are not a material factor so far as a movement from coal from Indiana, interstate coal, to this destination is concerned, isn't that the truth and the fact, and you regard——

Exam. Trezise: You have asked him a question. Let him answer that question.

Are they or are they not, according to you, a real factor in the 13th Section proceeding that he is talking about, the rates to Northern Illinois?

By Mr. Cardy:

Q. From the Northern Illinois group to Northern Illinois points.

A. As shown by my exhibits and testimony in this case, it is our contention that all the rates from mines in Illinois are material.

Q. That is a pretty general statement. In support of that statement, will you pick out one point of origin in Northern Illinois, or from the Northern Illinois group to some representative destination where it would materially affect it?

A. No, I can't do that now, Mr. Cardy. It would require a study on my part to do that, to name one particular destination in the Northern Illinois group on the one hand and Indiana on the other.

Q. Now, one other question. Mr. Scott, I want to talk [fol. 1934] about the Boonville situation a little bit. In these exhibits you show that there are eight points of origin in the Boonville district. I don't quite understand how you arrive at eight points of origin. Can you tell us what the situation is on the Boonville with reference to the actual originating points?

A. Well, there *is* prabably two or three mines in the Boonville district of Indiana.

Q. Will you give me definitely how many mines there are in the Boonville district, and I take it they are all on the Southern Railway, is that true?

A. That is true. Boonville Railroad is the only one that serves the——

Q. Give us the largest mine; the largest mine in the Boonville district.

A. The Sunlight Mine of the Sunlight Coal Company.

Q. That is the largest mine? And what are the other two or three mines you mentioned? Are they so insignificant that you can't remember?

A. No, I am afraid I remember one or two of them. Mariah Hill.

Q. Now, would you say, as a general proposition, that the only real mine in the Boonville district is the Sunlight Coal Company mine located on the Southern Railway?

Mr. Stadell: I object to that, Mr. Examiner, "the only real mine." What does he mean, real mine?

Mr. Cardy: Well, maybe that isn't proper.

[fol. 1935] Exam. Trezise: Maybe the witness knows what he means.

By Mr. Cardy:

Q. Well, tell us about the other mines.

A. The Sunlight Mine is the largest mine in the Boonville district and is a large producer. I don't know its actual production; what its production is, I don't know.

Q. Is there any other mine down there that compares with its production?

A. Not in the Boonville district. You have got the Mariah Hill, which is another large mine; then you have got two or three very small mines.

Q. Now, the Sunlight Mine is the largest mine, is it not, located in the Southern part of the State of Indiana?

A. Yes, sir.

Mr. Stadell: Now, just a minute. I object to that: "Southern part of the State of Indiana."

Exam. Trezise: Well, the witness said it was. There can't be an objection to that.

The Witness: I would like to interpose here, I understand he means, from his question he means the Boonville district by the Southern district of Indiana. That was my understanding of his question.

Exam. Trezise: You stated it was the largest mine in the Boonville group once or twice, now. What is this other question?

Mr. Stadell: Mr. Cardy wants to make that the largest [fol. 1936] mine in the entire Southern half of Indiana.

Mr. Wilkinson: You would also include Evansville in that Southern part:

Mr. Cardy: I know; you dealt with Evansville. I won't waste any time on that. I think the record is clear on that.

By Mr. Cardy:

Q. Now, Mr. Scott, will you refer to Carriers' Exhibit 4, Section 3. That is the adjustment to Freeport. I don't see any——

A. Page 8, Section 3, Mr. Cardy?

Q. Now, in figuring the mileages, regardless of whether they are short distance or longer tariff routes——

A. May I interrupt, please, to ask you what page you are on?

Q. Page 8.

A. Page 8?

Q. Adjustment to Freeport.

A. I still can't—I am sorry. I don't know whether I am——

Q. This is Exhibit 4.

Mr. Wilkinson: Part what?

The Witness: I have got Exhibit 4. Now, what section?

By Mr. Cardy:

Q. It is Section 3, according to my——

A. Section 3, page——

Q. Page 8.

A. That is Freeport, Illinois.

Q. Yes.

A. Yes, sir, I have it now. I was in Section 5 all the time. [fol. 1937] Q. Now, in using as the relative mileages, in testing rates in this proceeding, you will note from Southern Illinois, Item 917, a mileage of 371.2 miles as used in Southern Illinois?

A. Yes, that is the average from the group.

Q. You will notice in column A the short tariff route is 346 miles.

A. 340.6, yes, sir.

Q. And the longest tariff route is 475 miles.

A. 476, yes.

Q. Thereby arriving at an average of 371.2. Now, if you will drop down to Boonville, you will notice the short tariff route is 408 miles.

A. Yes, sir.

Q. The longest tariff route is 408 miles, and that the average from the group is 408 miles—or 400.8 miles.

A. Yes, sir.

Q. Now, notwithstanding the fact that the longest tariff route in Southern Illinois is 476 miles, and from Boonville it is only 460 miles, the average distance which is used from Boonville is about 50 or 60 miles higher than the average tariff route from Southern Illinois. What have you to say? What is the reason for that distance, if you know?

A. The difference in distance via the shortest tariff route, of course, means from the points in that group via the shortest route over which the traffic can move. The [fols. 1938-1939] distance via the longest tariff route, or

the longest routes over which the traffic can move. It is obvious that the longest distance over which the traffic can move is 76 miles shorter from the Boonville District than it is from the Southern Illinois District.

. . . . . .

[fol. 1940] By Mr. Cardy:

Q. Well, when did you go with the Coal Trade Bureau?
A. 1940.
Q. 1940?
A. July, 1940.

[fol. 1941] Q. Well, then, in your connection with the Milwaukee, did you have anything to do with the establishing of the rates from the Tecumseh Mine, or do you know the facts and circumstances there?

A. I had something to do with it, yes, as a member of the railroad committee that considers the rates from that mine; but while I know what happened in a general way, I don't know the details of it.

Mr. Cardy: All right, that is all.
Exam. Trezise: Mr. Marks?

By Mr. Marks:

Q. Mr. Scott, you made numerous references to so-called standard differentials between the Indiana and Illinois groups which you would like to have restored. I am to understand by that that the differentials that you are seeking are those that were in effect prior to 1930 before certain changes were made in the rates from Southern Illinois to Northern Illinois, is that correct?

A. Yes, sir.

Q. And by way of identifying those differentials, I believe you referred, on page 17 of your prepared testimony, to a so-called "Blue Book" as containing those differentials?

A. Yes, sir.

Q. Now, in answer to a question by Mr. Vesey, I understood you or your counsel to say that you were agreeable to having these former differentials restored, even though [fol. 1942] it might give Fulton County better differential under Southern Illinois than it now has; is that correct?

A. I said I had no objection, I am not involved in that

particular point of the adjustment between Fulton County on the one hand and Southern Illinois on the other to these destinations. He asked me if I had any objections to it. I could give none because I am not involved in it.

Q. Wouldn't you be involved if, by reason of the restoration of the former differentials between Fulton County and Southern Illinois, Fulton County might be brought closer to Northern Illinois than some of your Indiana mines and therefore affect your differentials between the Fulton County and Indiana to Northern Illinois?

Mr. Vesey: Now, maybe I have got a lapse of memory, but I don't recall ever having asked this witness any questions with respect to that. As a matter of fact, I haven't questioned the witness as yet. So if you are predicating a question on that, I appreciate the anticipation but I am afraid it is not the fact.

Exam. Trezise: Does it help you any, Mr. Marks?

Mr. Marks: No, I am merely trying to get the facts on the restoration of the former differential. Whether it helps or hurts Mr. Vesey, I am not particularly concerned; but I understood from his answer to Mr. Vesey that he was willing to accept the former differentials even though they might be—

Exam. Trezise: All right, Mr. Marks, go ahead.

[fol. 1943] By Exam. Trezise:

Q. If they did reduce the differential Fulton-Peoria as compared with Southern Illinois, would that affect the interest of the Indiana people?

A. Yes, sir, it would.

By Mr. Marks:

Q. In other words, in order to get the differential switch, you are willing to take the bitter along with the sweet?

A. No, I don't agree with that, Mr. Marks.

Q. Well, may I ask you this: Are you willing to have the differentials restored between Indiana and West Kentucky that were in effect, as shown by the Blue Book in 1925?

A. I want to point that out this way, that the differentials that were changed between Indiana and Western Kentucky since 1925 were done under authority of an order

of the Interstate Commerce Commission upon a full and complete record. That order is still outstanding.

The differentials that were disrupted in 1930 and 1932 between the Illinois groups on the one hand and the Indiana groups on the other were not disrupted by an order of the Interstate Commerce Commission but were disrupted by an order of the Illinois Commerce Commission reducing the rates from the Illinois groups to the Northern Illinois points; and we are asking for the restoration of those differentials that were disrupted at that time by order of the Illinois Commerce Commission in reducing the rates from the Illinois mines and giving no consideration, either by the Commission or the carriers, to the rates [fol. 1944] from Indiana.

Q. They were disrupted, though, by an order of the regulatory body?

A. Not by anybody that had any control over our rates; only an organization that had control over the rates within the State of Illinois.

Q. Well, aren't you interested in the differentials between Indiana and West Kentucky?

A. Very much so.

Q. Do you feel that the differentials between Indiana and Illinois that were in effect in 1925 are any more sacred than the differentials that were in effect between Indiana and West Kentucky at the same time?

A. Yes, I do. I have testified in this proceeding that to my knowledge transportation conditions were similar from Indiana mines and from Illinois mines. Now, also, from my knowledge, I don't believe that transportation conditions are the same between the Illinois mines and the Indiana mines on the one hand and the Western Kentucky on the other.

Mr. Marks: That is all.

Exam. Trezise: Any further questions?

Mr. Vesey: Yes.

Exam. Trezise: Mr. Vesey.

By Mr. Vesey:

Q. Mr. Scott, as I understand from your exhibits here, certain of the proposals of the carriers result in a change [fol. 1945] in differential at Beloit between the Fulton County operators on the one hand and certain Indiana

operators on the other; result in a change, is that right?

A. That is correct.

Q. Now, confining our examination to Beloit, I understand that the fundamental upon which you predicate your contention in this case is that the differentials growing out of the so-called Hardie Agreement, which went into effect in July 19, 1925, are differentials which should be recognized and preserved in any rate adjustment that may flow from this proceeding, is that right?

Mr. Stadell: I object to that, Mr. Examiner. The Commission will decide whether those differentials should be recognized and preserved.

Mr. Vesey: I just ask him to state his contention.

Mr. Stadell: Not the witness.

Mr. Vesey: I am just asking as to his contention in this proceeding.

Exam. Trezise: I think we will let him answer that if he can, if he has an opinion.

The Witness: My opinion and my testimony is that the differentials that existed at that time between the Illinois mines on the one hand and the Indiana mines on the other should be restored in this proceeding.

By Mr. Vesey:

Q. Now, I take it that opinion and that contention of [fol. 1946] yours is not just happenstance but that is the result of a thorough study on your part of those differentials, of the freight structure, the rate relationships, competitive conditions and all of the other factors which you have alluded to in your direct and cross-examination to date?

A. That is correct.

Q. And that is a considered opinion on your part in so far as the maintenance of those differentials are concerned?

A. Yes, sir.

Q. And that grows out also of a study and consideration of transportation conditions as between the two groups, is that right?

A. Transportation conditions that are of my knowledge, yes.

Q. Now, one of the differentials which was in effect at Beloit and which went into effect July 19, 1925, was a

differential of Fulton County; of Fulton-Peoria under Southern Illinois, isn't that correct?

A. Yes, sir.

Q. And that differential at that time was 79 cents per ton Fulton County under Southern Illinois?

A. I believe that is correct.

Q. Now, I take it that it is your considered judgment, as you just testified, that that is a differential which, in establishing of a just and reasonable rate structure, that should be recognized and given effect to at this time?

A. If it can be shown that the differential is proper, yes.

[fol. 1947] Q. And I understood that in making the direct statements that you made with respect to the bringing back of those differentials, you did consider all the factors that I mentioned, and that is your considered opinion from the stand at this time?

The Witness: I would like to have that question again, Miss Reporter, please.

(Question read.)

The Witness: I would like to know what is meant by "those differentials," Mr. Vesey.

By Mr. Vesey:

Q. I am talking about the Fulton-Peoria differential under Southern Illinois at Beloit.

A. I didn't give the study to the differentials Fulton County vs. Beloit—I mean Fulton County vs. Southern Illinois to Beloit as I did to the differentials of the Indiana mines and groups versus those from Illinois.

Q. Now, it was my understanding of your testimony, Mr. Scott, that you viewed the Illinois-Indiana adjustment as a whole; that you couldn't pick it apart, that you had to consider it as one whole adjustment, isn't that right?

A. That is correct.

Q. That being true, it also being true, as you just testified, the bases upon which you reached your judgment as to these differentials, I now ask you, is it or is it not your considered opinion that a just and reasonable adjustment, Fulton County with respect to Southern Illinois at Beloit, [fol. 1948] would be Fulton County 79 cents under Southern

Illinois predicated upon Blue Book adjustment of July 19, 1925?

A. The Blue Book adjustment of July 19, as published effective July 19, 1925, Mr. Vesey, carried with it a differential of 79 cents; that is true. Now, I have not given—in answer to your question, first, I would say, based on what was done at that time by the carriers and the Commission and the receivers that met and published a differential of 79 cents, I would say that was proper; but there must be other things, of course, taken into consideration.

In my contention here with the differentials Indiana vs. Illinois, I have not relied solely on the fact that that rate was published in July, 1925. There are many other things I have taken, I have given in my testimony and evidence.

Q. Let me put it to you this way, then: Do you have any reason to believe at this time that the relationship established on July 19, 1925, between Fulton County and Southern Illinois was in anywise unreasonable, improper, or that there is anything, in fact, wrong with it?

A. I have made no study and therefore I couldn't say I would have any reason to believe it was wrong, because I have made no study of it.

Q. Put it directly, then: So far as you know at this time, you, as a rate expert, have no criticism to make with respect to the reestablishment of that differential, have you?

[fol. 1949] A. I will offer no objection but I will not offer to support it, either.

Q. But you know of no objection as to why it shouldn't be reestablished?

A. What?

Q. You know of no reason why it should not be reestablished?

A. I say I haven't studied that, Mr. Vesey. I may if I study it but I haven't studied it.

Mr. Wilkinson: Just a minute.

Mr. Vesey: Just answer my question. Do you know—

Mr. Wilkinson: Your question is there and I object to it. The witness has said he has made no objection to it but he hasn't advocated it. He has expressed no opinion, either as an expert or non-expert as to the propriety of that particular differential. I don't think it is fair to press him any further.

Mr. Stadell: And he has said he has made no study of it, so how can he express an opinion on it?

Exam. Trezise: You are all agreed on that. How do you stand on this gentlemen's agreement here?

Off the record.

(Discussion outside the record.)

Exam. Trezise: All right, proceed.

By Mr. Vesey:

Q. Let's approach it from another angle. Mr. Scott, you were with the Milwaukee Railroad, were you not, in their rate department, when the change in the differential [fol. 1950] Fulton County over Southern Illinois took place?

A. Yes, I was.

Q. And you are familiar with the reasons incident to the reduction of that differential, aren't you?

A. Well, I was on the Committee that checked out the rates in compliance with the Commissions—in the first decision in the Beloit case, which was made in 1933.

Mr. Biaett: Excuse me just a minute.

By Mr. Biaett:

Q. Were you on the Committee which determined which rates would be checked out and which rates would be published, Mr. Scott?

A. No.

By Mr. Vesey:

Q. Well, I take it that you did study, Mr. Scott, the differential relationships of Indiana vs. Illinois, not only in the suspended and compared territory, but as shown by your map in that territory which lies to the north of the compared territory, so referred to in this proceeding?

A. Yes, sir.

Q. And I gathered from the statement which you made in answer to the first direct question asked you on page 8 of your direct testimony, that there were certain standard differentials which applied Indiana vs. Illinois, except where you came into your short-haul territory?

A. Yes, sir.

Q. Now, will you tell us, please, what happens to those [fol. 1951] so-called differentials or differences in rate as you move into your short-haul Indiana and—let's take Indiana territory first. Do they widen or do they decrease?

A. They do both.

Q. They do both?

A. Yes, sir.

Q. Now, take, for example Brazil-Clinton, let us say, against Linton-Sullivan. As you come from the north going down, generally speaking, what happens to those differentials?

A. Generally speaking, they remain constant ten cents Brazil-Clinton over Linton-Sullivan.

Mr. Wilkinson: Under; Brazil-Clinton under Linton-Sullivan.

The Witness: Under Linton-Sullivan, yes.

By Mr. McElroy:

Q. You are going South?

A. Yes. Under Linton-Sullivan, until you reach a certain point in the State; I don't know what that point is right now. And then those differentials, as I recall it, from the Brazil-Clinton and the Linton-Sullivan Group merge and the same rate applies from those two to districts such as Indianapolis.

By Mr. Vesey:

Q. That is getting East, isn't it? I am talking about directly North, coming from the North right down the two fields.

A. Well, the differential remains the same until it gets—I can't tell you the point, Mr. Vesey. I would have to pick [fol. 1952] it out and study it.

Q. Let's come down to Chicago, first. What is the differential relationship there?

A. Ten cents.

Q. How is that?

A. Ten cents.

Q. All right, now, and as you move South from Chicago. In coming right into your short-haul territory, what happens to your differential, Brazil-Clinton as against Linton-Sullivan?

A. You mean in Indiana?

Q. Yes.

A. Illinois is fixed by the Commission.

Q. I am asking you generally. I don't want to pin you down point by point unless we have to. I want you to tell us generally what happens to that differential.

A. I would say the differential remains, as I recollect it, sir, the differential remains ten cents——

Q. Don't you know, as a matter of fact, Mr. Scott, that your differentials in your short-haul territory, as you approach the origin groups, with slight variations, increase as your distance decreases? Don't you know that as a matter of fact?

A. I think you are wrong, Mr. Vesey. Now, I am willing to get the tariff out and tell you what they are, if you wish.

Q. Have you them with you?

A. No. I thought we did. We have everything else. But [fol. 1953] it is my recollection, Mr. Vesey——

Q. I don't want your recollection, now, unless you know, Mr. Scott. If you do know I want the answer but I don't want a guess. Now, do you know or don't you know?

Exam. Trezise: Well, not without looking at the tariff. That is what you said, didn't you?

The Witness: I think I would have to look at the tariff. You are getting down to specific points and I can't answer specifically.

By Mr. Vesey:

Q. Now, let me ask you, without regard to that but just asking you as a freight rate expert: Isn't it generally true in the construction of freight rates that as you approach the origin groups, that your differentials or differences increase as the distance decreases between any two comparative groups?

A. Yes, sir.

Q. And isn't that a fundamental principle in the construction of so-called just and reasonable rate schedules?

A. Yes, sir.

Q. And it is something that flows not only from a theoretical principle but it flows also from consideration of movements of the traffic, the point of view of rates which give effect to—I believe it is your Fourth Section, and that

you must not have a higher rate to a longer point than you do to a shorter point. In fact, it stems from a consider- [fol. 1954] ation of a proper rate structure, does it not, that principle?

A. Yes, I believe that is right.

Q. Now, you do have exceptions to it, do you not, either because of lack of movement or lack of interest at a particular point where a rate was established, and because of no complaint, so to speak, or no interest being shown, the rate remains; so consequently, as years pass, it gets out of its parity with your general situation. You have those situations?

A. Yes, not very often.

Q. But generally you stick to the fundamental principle, where you have got two competitive districts, both interested in maintaining their place in the sun, so to speak, one with the other?

A. Yes.

Q. Now, do you know of any reason why, if that be a fundamental principle, that principle shouldn't be applicable to the Northern Illinois groups, say, for example, Fulton-Peoria, in their relationship with Southern Illinois in short-haul territory?

A. That comes back, Mr. Vesey—if you don't mind, I will make an observation. That would come back to the fact as to what can or cannot be considered short-haul territory.

Q. Conceding that, Mr. Scott; I asked you, do you know of any reason why the fundamental principle shouldn't be applied?

A. No, sir, I do not.

Q. And you would apply that principle regardless of whether the chips fell on the Indiana side of the line or the [fol. 1955] Illinois side of the line, wouldn't you?

A. Well, there is no short-haul territory common between Fulton County and the Indiana groups; no common short-haul territory, I mean.

Q. I don't think you got my question. Strike that question and put it this way:

You advocate that principle in the construction of your own rates, certainly, don't you?

A. Yes, sir.

Q. And you are advocating that in the rates involved in this proceeding to Rockford and such points?

A. I haven't discussed that in this proceeding.

Q. That is the principle involved in that rate structure.

Mr. Wilkinson: That short-haul territory principle, as far as most of our competition is concerned, isn't involved in the rates to Rockford.

Mr. Vesey: Let's not have two witnesses. I am having enough trouble with one.

Mr. Wilkinson: I am making an observation. Your question includes a premise that isn't, as I say, a fact.

Exam. Trezise: All right, let the witness then answer as he would answer that. Give your answer to it.

Mr. Vesey: I think if we are going to have the annoyance we ought to have the amusement. I would suggest Charlie get up in his lap here, if they are both going to testify.

[fol. 1956] Exam. Trezise: Let him answer the question. Do you have the question in mind?

The Witness: I would like to have it again.

Exam. Trezise: Read the question.

(Question read.)

By Mr. Vesey:

Q. In other words, the question is this, Mr. Scott: That principle is involved, is it not, basically involved in your contention here with respect to rates to Rockford, Illinois, from the Indiana groups?

A. Short-haul territory; short-haul adjustments?

Q. No.

A. I don't understand your question.

Q. No, that the differential increases, should increase as the distance decreases.

A. No, for this reason, Mr. Vesey. Your question would go to the fact that it is an assumption that as distance decreases, differentials should change, and that is not true. You must reach a point before that could be applied.

Q. In other words, you must group them, is that what you are talking about? Block them out, so to speak?

A. No, you must give consideration to the difference in distance. It is not the mere fact the distance changes.

Q. I don't mean as to every mile, but I am talking about the principle, generally speaking.

A. I can't agree with that, sir, unless we have an under-[fol. 1957] standing. Now, from Illinois and Indiana to

Rockford, I can't concede that as the distance decreases, the differential should change or should narrow or the mines in some Illinois group nearby the destination should be considered short-haul territory.

Q. Would you advocate the converse of that principle, for example, on your Indiana rates with relation to Illinois rates in the Northern Illinois destinations, and that is that a differential would be satisfactory to you in that area which was less than your differential into, let us say, Northern Wisconsin?

A. No.

Q. You wouldn't advocate that?

A. No.

Q. Why wouldn't you?

A. Why would I? I don't know of any reason why I should. I will put it that way. There is no reason why I should do that.

Q. Don't you have that, as a matter of fact?

A. Not if I understood your question rightly.

I would like to make an observation here, Mr. Vesey, if you don't mind, in order to help this record.

Q. Surely.

A. If you would cut your questions down a little bit so that I don't lose the first part by the time I get down to the end of them, I think I would answer them a little better.

Q. All right, sir. Turn to Exhibit No. 50, will you, please? [fol. 1958] A. Is that a map?

Q. Yes.

A. Yes, sir.

Q. Now, just in the interests of time, that map does not show Indiana, does it? It lies to the East of Illinois?

A. Does not show what?

Q. It doesn't show——.

Exam. Trezise: Indiana, he said.

The Witness: It doesn't show the State of Indiana, no.

Mr. Vesey: I beg your pardon, it is Exhibit 48. I am sorry.

By Mr. Vesey:

Q. Do you have it before you?

A. Yes, sir.

Q. Now, as you start out in South Dakota, you have a differential there of Brazil-Clinton, I believe it is, of a dime under Southern Illinois; right?

A. Correct.

Q. And then as you come toward the Indiana origin groups, the next block of figures as shown in your exhibit is in Wisconsin, where you have 30 cents under Southern Illinois for the Brazil-Clinton Group, is that right?

A. That is correct.

Q. So as we go, then, from South Dakota to Wisconsin, as the distance has decreased, your differential has increased, has it not?

[fol. 1959] A. That is right.

Q. And as you moved over, then, to the West Bank Lake Michigan dock territory, that differential became 35 cents under Southern Illinois, did it not?

A. Yes, sir.

Q. And then again the principle was adhered to, is that right?

A. Yes, that is right.

Q. Then as you got down nearer to Indiana, you come down to the Chicago Switching District, and there Brazil-Clinton is 40 cents under Southern Illinois, isn't that correct?

A. That is right.

Q. There again the principle is adhered to, is it not?

A. Yes, sir.

Q. And then as you move from the Chicago Switching District down through Gary, which is not shown on this map, into what you then term short-haul, isn't it a fact that Brazil-Clinton's differential under Southern Illinois increases as that distance decreases, generally speaking, in that territory?

A. Mr. Vesey, by no stretch of the imagination could Gary, Indiana, be called a short-haul destination.

Q. I am not talking about Gary, but I am talking about that territory coming down into there.

A. No, sir.

Q. "No," is that your answer, that you didn't know because you hadn't checked it or——

[fol. 1960] A. No, I tried to explain to you, Mr. Vesey, I wouldn't consider Gary or Schneider short-haul territory.

Q. I am not talking about that.

A. You mentioned Gary.

Q. I am asking you whether, as you come down through that territory to your origin group, the principle isn't adhered to?

Mr. Kaier: Gary appears to be in the group, as shown by the map, in the Chicago zone.

Mr. Vesey: Unfortunately I mentioned Gary as a name. I am not using it as a short-haul point. I am trying to describe the territory through which we pass.

By Exam. Trezise:

Q. Do you understand his question?

A. I understand his question.

Exam. Trezise: Then let him answer.

Mr. Vesey: I would like to have an answer.

The Witness: We come a considerable distance south in the State of Indiana before there is a change in differentials.

By Mr. Vesey:

Q. Now, when the differential changes, doesn't the differential—say, for example, Brazil-Clinton under Southern Illinois—increase as that distance has decreased, generally speaking?

A. There is no relationship or no differential recognized between——

Q. Or the difference, then, in the rates?

A. The different changes, yes. I doubt if there are any rates to a good many of those points from Southern Illinois.

[fol. 1961] Mr. Vesey, if I may, please, when you get into Indiana, the central part of Indiana, there is no relationship recognized or established, whatever you want to call it, between the rates from Brazil-Clinton and Southern Illinois, in my opinion.

By Mr. Vesey:

Q. I didn't get the last part of that.

A. I say there is no relationship between the rates from Southern Illinois and Brazil-Clinton, Indiana, Group, to the destinations in the so-called Indiana short-haul territory.

Q. By that you mean there is no differential relationship, is that what you mean?

A. Yes, sir.

Q. There are points in there where you do have rates, though, from Southern Illinois, are there not?

A. Yes, sir.

Q. . . to those points. Generally speaking, has not the difference in the rates then, short-haul Brazil-Clinton under Southern Illinois, increased above 40 cents?

A. Oh, decidedly.

Q. That is the point I am trying to get to. Now, they decidedly increase. I don't care how much they have increased; all I am interested in is the principle. They have increased?

A. The differences have increased.

Q. And the distance has decreased?

A. Definitely.

Q. Now, then, do you know of any reason why, taking Southern Illinois as a base group, Fulton-Peoria, now, as the [fol. 1962] compared group instead of Brazil-Clinton, those same principles which you have just been testifying to should not appertain to those two points?

A. In the event it is considered short-haul territory——

Q. I say, do you know of any reason why those principles should not appertain? That is the question.

A. Yes.

Q. What is that principle? What is that reason?

A. The reason is this, because I do not know whether it can be considered to Rockford and Freeport, because of the distances involved, that it is short-haul territory.

Q. Now will you answer my question? You know that is not an answer to my question, don't you? Don't you know?

A. I believe it is.

Mr. Vesey: Read the question.

(Question read as follows: "Now, then, do you know of any reason why, taking Southern Illinois as a base group, Fulton-Peoria, now, as the compared group instead of Brazil-Clinton, those same principles which you have just been testifying to should not appertain to those two points?")

Mr. Vesey: Those two groups.

The Witness: My answer is yes.

By Mr. Vesey:

Q. What is the answer? You say you know why the principles should not apply, Fulton-Peoria, as against Southern Illinois, as they have applied, and as you have testified, Brazil-Clinton as against Southern Illinois. Now, I want

[fol. 1963] to know why those principles shouldn't apply over in the case of Fulton-Peoria. That is my question.

A. Are you trying, Mr. Vesey, so that I may answer your question the way you want it—I am trying to, very much, to give you a proper answer. Are you basing that question on the assumption that the rates from Fulton County or the distance from Fulton County mines to Rockford and Freeport entitle it to consideration as a short-haul territory?

Q. Certainly not. I am asking you only as to the principle. I am not referring to Rockford, Freeport, or any other place. I am asking you if you know any reason why the principles in freight rate making which you have just testified to, Brazil-Clinton as against Southern Illinois, starting at your distant points, coming down to your short-haul territory, should not also be applied in making a freight rate structure for Fulton County as against that same base group, Southern Illinois? Now, do you know of any reason why they shouldn't apply?

A. First of all, you referred to my comparisons from Indiana to this Northwest territory. The distances under consideration from Indiana to this Northwest territory are considerably greater, of course, than the distances from Chicago or Southern Illinois to the Northern Illinois points. It is a vast area up there.

Take the points where the ten-cent differential Brazil-Clinton under Southern Illinois applies and the area where the differential Brazil-Clinton under Southern Illinois of 20 [fol. 1964] cents applies. There are no distances into there from Southern Illinois on the one hand or the Indiana groups on the other comparable with the distances from the Fulton County group and the Southern Illinois group into this Northern Illinois territory; and I would say, Mr. Vesey, the application of the principle for these long distances applied to the short distances to which you refer might have to be tempered a bit.

Q. Well, granted, let us say all that may be true: Now, will you answer my question? Do you know why the principles should not be applied as to one group the same as they are applied to the other?

A. I just gave it.

Q. That is your best answer to that question?

A. Yes, sir.

Q. Are we to take it from that answer then, Mr. Scott, that you wouldn't apply the same principles in making

freight rates from the Fulton-Peoria group as against a base group as you would Indiana against the base?

A. Indiana against the base group?

Q. Yes, you wouldn't apply the same principles in freight rate making?

A. They are applied on a differential basis, Mr. Vesey.

Q. I am asking you——

Exam. Trezise: Now, Mr. Vesey, I think Mr. Scott doesn't know what you mean. I think that Mr. Vesey is contrasting the method of making rates from Indiana, base group [fol. 1965] and differential group, with the method of making rates in Illinois, base group and the differential group.

The Witness: I understand that, Mr. Examiner.

Exam. Trezise: To short-haul territory. Now, if you apply it over in Indiana, he says would you apply it over in Illinois? That was my thought, if I got his idea. Maybe I didn't get it.

Mr. Vesey: Just as simple as one, two, three.

By Exam. Trezise:

Q. Would you apply the same principle in Illinois as you say applies in Indiana?

A. To short-haul territory, yes.

By Mr. Vesey:

Q. Why wouldn't you do the same with the other territory?

Mr. Wilkinson: It is not a question of any particular fact, rate, distance, mileage, or anything else, Mr. Scott. Mr. Vesey is asking you, would you make rates on the same principle and theory of rate-making from points and origins in Illinois as you did in Indiana.

The Witness: Yes, sir.

Mr. Wilkinson: That is all he is asking.

The Witness: That is a very simple question and I can answer that.

Exam. Trezise: Now, if you can stop now, we will give the reporter a rest here.

(Recess taken.)

Exam. Trezise: All right, gentlemen, Mr. Vesey, continue.

[fol. 1966] By Mr. Vesey:

Q. Now, referring again, Mr. Scott, to your Exhibit 48, and referring specifically to the territory enclosed within heavy black lines, in which appear the designations 30, 20, 13, and 10. That territory embraces what is referred to in this proceeding as the suspended territory in Northern Illinois, does it not?

A. In a general way, yes, sir.

Q. And that suspended territory, for rough outline purposes, is the territory north of that black line, south of the border between Illinois and Wisconsin, east of the Mississippi River, and west of the black line on the exhibit?

A. That is the suspended destination territory in Northern Illinois, yes.

Q. Now, in that territory, under the proposed rates, thinking only of Indiana vs. Illinois we have differentials resulting which are less than those differentials generally shown in that territory, do we not?

A. Yes, sir.

Q. And as to those differentials which are less than the differentials shown on the map, Indiana, in this proceeding, is asking that they be increased so that as, for example, you have Brazil-Clinton under Southern Illinois 30 cents?

A. That is correct.

Q. And by virtue of that request, predicated, as you have stated, upon a Blue Book relationship in 1925, you are, in effect, asking, are you not, for the restoration of differen-
[fol. 1967] tials, Indiana vs. Illinois in that suspended territory equal to the differentials which apply Indiana vs. Illinois to the north of 30, 20, 13 and 10?

A. Yes, Mr. Vesey. The Blue Book differential was one of the reasons we are giving for the restoration of our differentials. There are other reasons and other proofs in the testimony in evidence.

Q. But you are asking for differentials which would now bring those differentials into a compatable relationship with the 20, 30, 13, and 10, aren't you?

A. Yes, sir.

Q. In other words, viewing it from the point of view of principle alone, Indiana in this proceeding is asking for recognition of the fundamental that the differentials should increase as the distance increases, or in certain block territory they should remain the same, but in no event be lower?

A. Yes, sir.

Q. And that has been fundamental with Indiana throughout almost all its rate history, in so far as freight rate cases are concerned, isn't it?

A. We have never, Mr. Vesey, in Indiana, contended that distance alone should govern that. I would like to make myself clear on that point, in answering your question.

Q. No, I am not talking about distance. I say those fundamental principles have been inherent in Indiana's contentions for years on end, have they not?

[fol. 1968] That is one of the fundamental principles we have contended.

Q. I am not talking about all of them, but it is one fundamental principle?

A. Yes, sir.

Q. it has gone all through Indiana's contentions, through its rate history, so to speak?

A. I would say so, yes.

Q. Or to state it in another way, Mr. Scott, when you request the restoration of differentials which you have referred to, Indiana vs. Illinois, you are predicating that request, are you not, on something else besides age?

A. Very definitely.

Q. In other words, the fact that it was there in the past, it is old, hasn't anything to do with your request particularly, has it?

A. I think the fact that it is of long standing has everything to do with it. That is one of the factors. I am predicating it on other factors than that, if I make myself clear.

Q. Just to follow your line of thinking out, when you make that statement, I assume that you give to that a presumption that since it has been of long standing, it must therefore be right.

A. I do say that anything of long standing must be presumed to be right until proved otherwise.

Q. Until proved otherwise?

Now, then, may we take that same line of thinking and [fol. 1969] apply that, again, to Fulton County against Southern Illinois, and we start out, as I understand your testimony, with the differential at Beloit, Fulton-Peoria, Southern Illinois, 79 cents on July 19, 1925, is that right?

A. That is right.

Q. And that differential relationship continued for a period of years, did it not?

A. Yes, sir.

Q. And then that differential relationship was disrupted along in about 1933, wasn't it?

A. That is correct.

Q. And that disruption occurred not because of any order by either Illinois Commerce Commission or Interstate Commerce Commission, isn't that true?

A. That is true.

Q. In other words, it was a disruption that occurred by virtue of published tariffs by railroads of their own volition, the disruption?

A. Yes, sir.

Q. Then I want to ask you this question: Have you any reason to believe that that relationship, Fulton-Peoria; Southern Illinois and Beloit is unreasonable?

A. I know of no reason why it is unreasonable.

Q. In other words, as far as you know, that 79-cent relationship is a minimum reasonable differential, Fulton-Peoria [fol. 1970] under Southern Illinois?

A. Well, I have stated, Mr. Vesey, I have made no study of it, and you are asking me to make a positive assumption it is a reasonable one. I have stated I don't know of any reason it is unreasonable, but I can't state it is definitely reasonable because I don't know.

Q. I am not asking you to make a statement based on study of a fact where you have reached a conclusion. I am saying, as far as you know, you have no reason to believe that that 79-cent differential was an unreasonable minimum differential under Southern Illinois, have you?

A. No, sir.

Q. And as far as you know, it may very well be a reasonable minimum differential?

A. As far as I know it may be.

Q. And at least we can go one step further, can we not, Mr. Scott, and have from you the direct answer—well, strike that question.

Now, will you refer to page 8 of your direct testimony?

A. Yes, sir.

Q. The first sentence in the second full paragraph of your first answer on page 8 reads as follows: "Except to short-haul destinations, the rates from the four major Indiana groups are differentially related." Will you please tell me what you meant by the term "short-haul destinations."

[fol. 1971] A. Yes, sir. In the State of Indiana there are differentials, established differentials to the Northern part of the State. Those differentials, are established differentials and continue the same, going south, until they reach a certain given point in the same—probably the north central part of the State. From there on, the differentials or differences vary.

As you proceed south, Brazil-Clinton no longer has the lowest rate. It may be on a parity with the rate from Linton-Sullivan. As you proceed further south and get down to our Boonville or Princeton-Ayrshire groups, those groups come in with the lowest rate. Those were short-haul destination territory, which rates were arrived at at a conference following a 13th Section proceeding which was dismissed, but during the pendency of that proceeding those short-haul area rates were agreed upon by the operators in Indiana, by the consumers of coal in Indiana, by the railroads serving Indiana, by a member of the Interstate Commerce Commission, as I recall it, or at least he participated in it to some extent, and by the Indiana Commission.

Now, that short-haul destination territory was agreed upon at that conference and the standard differentials, as we recognize them, for the Northern part of the State do not apply to that territory.

Q. Now, you said you reached a point. Can you tell me, roughly, in terms of miles, how far from your origin groups that point is when you break on differentially related [fol. 1972] territory to short-haul territory?

A. Oh, somewhere between 100 or 125; about 100 to 125 miles.

Q. 100 to 125 miles from the origin group; I mean just generally speaking. In other words, when you come down to within, let us say, 100 to 125 miles of an origin group, then you get into this thing we call short-haul territory?

A. Yes, sir.

Q. Now, as between any two groups—let's call them A and B so as not to refer to specific ones here. If you have A and B as compared origin groups, and by "compared" I mean we are going to relate them now to a base group. If 125 miles is a proper beginning point, we will say, for group A when related to the base, would not 125 miles be a proper breaking point for group B as against the base?

A. It may be if there were no other groups that would come into the picture there which might influence a change.

Q. You mean other things being constant, that would be true?

A. That would be true.

Q. Now, let's move over into Illinois. You know, do you not, that the so-called Northern Illinois Field lies to the east of the Fulton-Peoria Field?

A. Yes, sir.

Q. And you are familiar with transportation conditions, are you not? Let's say Fulton-Peoria as against Northern Illinois into the suspended territory.

A. Only in a very general way.

[fol. 1973] Q. Only in a general way? You are familiar with your Indiana transportation conditions as against Northern Illinois, are you not?

A. Yes, sir. I say in a general way. I am no expert. I want to make that clear.

Q. Aren't you familiar with Indiana as against Fulton-Peoria transportation conditions?

A. Yes, sir.

Q. And the fact of the matter is, because you are familiar with that, that you have recommended here the restoration of, among other things, the 79-cent differential Fulton-Peoria under Southern Illinois which grew out of this Blue Book adjustment?

Mr. Stadell: I object to that, the assumption in the question that he has recommended anything. He said he didn't know anything about it; he made no study of the differential.

Mr. Vesey: Oh, Mr. Stadell, the witness in the beginning said, "We want the restorations of the Blue Book differentials of July 19, 1925."

Mr. Stadell: He didn't say anything about Fulton County.

Exam. Trezise: Can't you just ask him the question?

Mr. Vesey: I asked him the question.

By Mr. Vesey:

Q. You recommended that, didn't you?

Exam. Trezise: There was an objection to your statement there. Now, ask the witness if those were his statements.

By Mr. Vesey:

Q. I said, did you not, in your direct testimony, recom-[fol. 1974] mend the restoration of the Blue Book differentials of July 19, 1925, of all these groups?

A. No, I spoke of Indiana groups vs. Southern Illinois.

Q. Then Fulton-Peoria was not one of your locations?

A. Not versus Southern Illinois. I have not testified with respect to the differential, Fulton County group vs. the Southern Illinois group.

Q. That, I believe you said, was because you didn't study it?

A. That is right.

Q. Turn to your Exhibit 42.

A. Yes, sir.

Q. I direct your attention specifically to page 1, to the Fulton County origin group. I note that you show average distance via the M. & St. L. and as a route Peoria-Chicago & North Western, a distance of 264.2 miles, is that right?

A. Yes, sir.

Q. The rate of $1.80?

A. Yes, sir.

Q. Did you know at the time you prepared this exhibit, Mr. Scott, that there was a route via the M. & St. L., Peoria-Chicago, Rock Island & Pacific-Depue and the Chicago, Milwaukee, St. Paul & Pacific?

A. I did not know it then or I don't know it now.

Q. You don't know that now?

A. No, sir.

Q. You mean you haven't checked the tariffs to ascertain that?

[fol. 1975] A. I have checked the tariffs but I didn't notice that route. I am not saying it isn't in there, Mr. Vesey.

Q. Would you make that check of that tariff and ascertain whether or not there is such a route and ascertain further whether or not that route shows six origin points, and a third fact, whether or not that shows as an average distance 163.4 miles?

A. If I can secure a copy of the tariff during this hearing, I will do that.

Q. Do you have the Carriers' Exhibit 3 there?

A. Yes, sir.

Q. Would you get that and turn to Section 5, page 37?

A. Exhibit 3——

Q. Exhibit 3, Section 5.

A. Section 5?

Q. Page 37.

A. Page 37. I have it, yes, sir.

Q. Doesn't that show the route to which I have just referred?

A. Yes, sir, but I would appreciate calling—I would like, rather, to call your attention to the circle reference mark on that route at the bottom. It carries with it a circle reference mark 1, encircled. At the bottom, that circle reference mark says, "Effective March 25, 1943." To the best of my knowledge, this proceeding was being heard during that time and therefore this route became effective after this proceeding started; and when my exhibits were [fol. 1976] made up, there was no such route in the tariff.

Q. Wasn't that one of the first exhibits introduced in this proceeding?

A. Their exhibits, I believe, Mr. Vesey, were distributed in the early part of this year, I believe—I may be wrong but I think so—and I am very sure, I am positive that when their exhibits were distributed, that route was not in the tariff as a published tariff route.

Q. It is in effect today, isn't it?

A. That is right.

Q. And on that route, instead of having 164.2 miles, you have 163.4 miles?

A. Yes, if there is such a route in the tariff, and I presume there is.

I would like to point out further, Mr. Vesey, so there will be no misunderstanding why that wasn't in my exhibit, my exhibits were prepared last fall for a hearing originally scheduled during the month of November, 1942.

Q. By the way, in view of that early preparation, I assume you had lots of time to study distances and rates and the like during the interim from October on through to March 23rd, when the hearing began?

A. In this particular proceeding?

Q. In this proceeding.

A. Yes.

Q. Did you make any studies of rates and distances from [fol. 1977] the several origin groups in Illinois to the destinations determined upon, both as suspended and the compared at the two hearings?

A. There were no destinations agreed upon at the pre-hearing conference, Mr. Vesey.

Q. Well, generally; did you make any studies?

A. Yes, sir.

Q. Did those studies differ from the studies which you have introduced in this proceeding in their results and, particularly, one, with respect to distances on a composite basis and short-tariff routes, shortest tariff routes, or, two, your levels of comparing rates, Indiana vs. Illinois?

A. No, sir.

Q. They did not?

A. No, sir.

Q. Do you have the results of those studies with you?

A. I have made no other study but one study and came to one conclusion. I don't know—my conclusions are in my exhibits, from the studies I made.

Q. I thought you said you made some studies from the several origin groups to the destinations in compared territory and the suspended territory shown by the carriers.

A. Oh, no, sir. I beg your pardon. I thought you were talking about only to the suspended territory. I have made no study as to the relationship of the rates from the Illinois [fol. 1978] groups to the compared territory.

Q. As to the suspended territory, did you make studies from the origin groups to the destination points which the carriers have referred to as representative of the suspended territory?

A. Yes, sir.

Q. Now, where are those studies?

A. They are contained in my Exhibit Nos. 73 and 74.

Q. Your Exhibits 73 and 74?

A. Yes, sir.

Q. In other words, for example, under column 4 of 73, the total distances there are the distances from the origin groups to the destination points used by the carriers in the suspended territory.

A. I want to see if I follow you right, sir.

Q. Yes.

A. These are my own computations from their Exhibits 3 and 4.

Q. All right, I want to just follow that for a moment. Take column 4, for example. Aren't the figures shown therein taken from the Carriers' Exhibit No. 11?

A. The figures that go to make up those figures are taken from Carriers' Exhibits Nos. 3 and 4.

Q. Shown in their composite Exhibit No. 11?

A. Yes, they have an Exhibit No. 11, based on their Exhibits 3 and 4.

Q. Now, do you have Exhibit 11 before you?

[fol. 1979] A. No. I can get it.

Q. Will you keep Exhibit 73 and Exhibit 11 before you?

A. Yes, sir. I have it, Mr. Vesey.

Q. Now, I wish you would help straighten me out a little bit on these distances. Take the first one under column 4. Carriers' Exhibit 11 shows 1574.7, and this shows 1574.7, does it not?

Mr. Wilkinson: Exhibit 11 he is referring to.

The Witness: Yes, their final exhibit, yes. That is correct. Both exhibits show the same figure.

By Mr. Vesey:

Q. And the same is true with respect to Victoria, comparing the two exhibits, is it not?

A. That is correct.

Q. And the same is true with respect to Atkinson?

A. That is correct.

Q. When you get down to Peoria, there is a variance, is there not?

A. Yes, sir.

Q. What is that variance due to?

A. I believe as we checked it, there was probably a slight error, in our opinion, in the carriers' computation.

Q. Now, does that flow from the fact that the carriers had 31 origins and you have 33?

A. No, I have used the origins shown—the number of origins and the distances shown in the Carriers' Exhibits 3 and 4.

Q. The carriers show 31 origins and you show 33.

[fol. 1980] A. I appreciate that.

Q. Can you explain that to us?

A. I would have to check back Exhibits 3 and 4 to see just where the error occurred. I may have checked it at the time, Mr. Vesey, but if I did I can't recall.

Q. The difference is some 300 miles difference as betwixt the two?

A. How many?

Q. About 300, isn't it?

A. Yes.

Q. Now, at Rushville you show exactly the same figures, do you not, to the tenth of a mile?

A. Yes, sir.

Q. The same thing is true of Wilmington?

A. Yes.

Q. The same thing is true of Fulton County?

A. Yes, sir.

Q. The same thing is true of Springfield?

A. Yes, sir.

Q. Now, just referring back again for the moment to Fulton County, you show 297 origins and the carriers show 285.

A. That is correct.

Q. Now, do you know whether the error is yours or in the carriers?

A. I can't remember, Mr. Vesey. I did know at one time. We have checked these back but it is quite some time.

Mr. Wilkinson: Just a minute. He asked you, was the [fol. 1981] error yours or the carriers.

By Mr. Wilkinson:

Q. Did you check it back to find out where there was error? In your opinion, where is the error?

A. In my opinion the error is the carriers' figures.

By Mr. Vesey:

Q. Now, all the rest of the figures on column 4 in that Exhibit 73, from lines 9 and 17, are different from the figures in the carriers' exhibits, are they not?

A. Yes, sir.

Q. Now, do you know, or in your opinion, is the error in your exhibit or in the carriers' exhibit?

A. I believe it is in the carriers' exhibits. We were very, very careful in computing our figures because we knew there was a difference.

Q. So that in your opinion Exhibit No. 11 is an erroneous exhibit?

A. Yes, sir.

Exam. Trezise: Can you stop there or are you still working on that exhibit?

Mr. Vesey: I am still working on it.

Exam. Trezise: We would like to adjourn about 12:15.

Mr. Vesey: I would like to just finish up, if I may, here.
Exam. Trezise: All right.
Mr. Vesey: It will only take a few minutes.
Exam. Trezise: Proceed.

By Mr. Vesey:

Q. Now, look at Exhibit 73 here; then when it comes to the [fol. 1982] question of rates, in computing the average, you show, do you not, a weighted average rate, both present and proposed?

A. Yes, sir. Not a weighted average.

Q. I meant distance. You used a weighted average for your averages on your distances?

A. I used the average distance by all the routes shown in the tariff.

Q. But the figure you got is a weighted average figure, is it not?

A. No, it is not.

Q. You mean it is a simple mathematical average?

A. Maybe we have a different opinion of what a weighted average is, Mr. Vesey.

By Exam. Trezise:

Q. You didn't use the tonnage?

A. No, sir.

By Mr. Vesey:

Q. I don't mean tonnage, but I mean as far as the distances are concerned. In other words, you weighted each origin point?

A. No, sir.

Q. You do not? You weighted each route, did you?

A. I did nothing. I used no weighted averages of any kind in making the computations.

Q. Let's take the figure 276 that appears in column 5. Tell me, how did you get that figure?

[fol. 1983] A. I divided the total distance shown under column 4 by the total number of origin points shown under column 3. The result was 260.0 miles.

Q. For example, Southern Illinois shows 882 origins there, doesn't it?

A. Yes, sir.

Q. For example, Alpha shows 12 origins.

A. Yes, sir.

Q. So that the net result of the average that you get is a weighted average, and by that I mean you give effect to each origin, do you not?

A. Yes, sir.

Q. So it really is a weighted average?

A. No, sir.

Q. It isn't?

A. No, sir. My idea, Mr. Vesey--let's get it—my idea of a weighted average is an average arrived at by the use of routes over which the tonnage moves.

Q. How would you describe the 276? Is it a weighted average, a simple average, or what is it?

A. It is an average distance from the mines—from the various groups shown here in Illinois, for example, under panel 1, of the short tariff route distances to the representative destinations used by the carriers in their Exhibits 3 and 4.

Q. And that gives full weight to the number of origins in [fol. 1984] Southern Illinois?

A. Oh, yes, that gives full weight to the number of origins.

Q. To each one of them. In other words, by that kind of an average you don't give as much weight to the origin, let us say, of Alpha, as you do to Southern Illinois as a group?

A. Well, Alpha is one group. It is a group and it is given as much weight in there as Southern Illinois is. Alpha is a group in and of itself, if you want to so call it.

Q. Don't you give—for example, Alpha is considered 12 times and Southern Illinois is considered 882?

A. That is right. I have used every origin in the Alpha group and every origin in the Southern Illinois group.

Q. But as group against group you are not giving them the same weight, are you?

A. Proportionately, yes. You wouldn't want me to inflate the Alpha and call it 882, would you?

By Exam. Trezise:

Q. Did you do anything different from what has been done in all these cases in figuring out the average distance?

A. No, sir.

By Mr. McElroy:

Q. Haven't you previously testified just how you computed these mileages?

A. Yes, sir.

Q. Several times?

A. Yes, sir.

[fol. 1985] Mr. Vesey: I didn't recall that.

The Witness: It is obvious on the face of it, Mr. Vesey. If there is any question about it, I would be glad to try to explain it.

By Mr. Vesey;

Q. All right, let's go over to column 16: How did you get the average of 174 which is shown down there for the Illinois groups?

A. It is based on each and every rate, different rate shown by the carriers in their exhibits. In other words, from Alpha to the 12 representative points we took the 12 rates. In other words, if there were two rates, Northern Illinois, for example there were more than 12—one rate from that group to the destinations, and we just took the total number of different rates to arrive at an average rate.

Q. So that when it came to Alpha, in computing that average, you used Alpha 12 times?

A. Yes, sir.

Q. The same as you did in computing distance?

A. Yes, sir.

Q. But when you got down to Southern Illinois, for example, you used Southern Illinois 13 times in computing the rate but you used Southern Illinois 882 times in computing the distance, is that correct?

A. That is correct.

Q. Now, if you had computed both rate and distance by the same number of origins there, I asked you, would you [fol. 1986] not have had a substantially different figure than the 174?

A. I believe so.

Q. Now, I submit to you that the figure you would have had would have been $1.95, and I will ask you to——

A. No, that is not the figure I would have had, I don't believe.

Q. Did you compute the figure?

A. Yes. Would you give me one moment?

Q. When did you compute it?

A. Yesterday. Last night, in fact.

Q. All right. May I have that, please?

A. Surely. I have the figures there and I neglected to take them with me.

Exam. Trezise: Let's compute that at 2:00 o'clock.

Mr. Dugan: Mr. Examiner, could I ask a few questions right now? I wanted to ask the witness two questions now.

Mr. Vesey: I object to that because I would like to finish up this cross-examination first, if you don't mind. I am sorry to have to do it, but I would like a little continuity at this stage.

Exam. Trezise: We will resume at 2:00 o'clock.

(At 12:20 o'clock p. m., recess taken until 2:00 o'clock p. m.)

Afternoon-Session

2:00 o'clock p. m.

The hearing was resumed pursuant to recess.

[fol. 1987] Exam. Trezise: All right, may we proceed?

HAROLD V. SCOTT, resumed.

Cross-examination (Continued).

By Mr. Vesey:

Q. Referring now, Mr. Scott, to column 10 of Exhibit 73, to the figure 174 shown in the third bracket from the bottom under column 10, you said that you had computed what that figure would be using the same method as was used in determining the distances. Now, what is that figure?

A. I have used that—refigured that in the same method as the carriers used in figuring that Exhibit No. 11 on rates and that would, that method as used by the carriers would result in a figure of 192.

Q. Now, that figure results from treating your rates in exactly the same way that you treated distances in getting 276?

A. In using the same formula as used in the distances.

Q. Yes. Using the same formula, you get 192?

A. Although the distance—the formula I used in the distances could not be used in arriving——

Q. Just a minute, Mr. Scott; you just answer my questions and we will save these long questions you are talking about. The formula is the same. That is the question.

A. Yes.

Q. Now, then, using the same formula, distances versus rates, what would the figure be under column 13 where you [fol. 1988] now show 61; what would the figure be?

A. 68.

Q. That would be 68?

A. Yes, sir.

Q. Now, going down to Indiana and taking column 10 and computing that rate under the same formula, would you not have the figure 206 instead of 207?

A. It is approximately the same. I haven't got the exact figure but it is approximately those figures. I didn't re-figure them, Mr. Vesey, because I knew they were approximately the same.

Q. Would you check to ascertain whether or not the figure appearing under column 13, as shown in your Exhibit 73, for the Indiana groups as 68——

A. It would be approximately——

Q. —is correct, or whether or not the correct figure there is 66.5? I won't ask you to figure it out now but I want you to figure it out sometime during the course of it and tell me whether or not that is not true.

A. You say would I?

Q. Yes, I mean sometime——

Mr. Wilkinson: Between now and Monday.

The Witness: Yes.

By Mr. Vesey:

Q. Now, then, in doing that, will you make your computation so as to include in Indiana the Evansville group, which is not included on Exhibit 73, and include the Evansville groups in your Indiana groups, and then give us the figure [fol. 1989] under column 13.

A. If I have time to do that. That is quite an order.

Q. Well, it is just adding Evansville to the Indiana groups.

A. That is all it is, but to get the figure to add is quite an order.

Q. Now, as I understand, Mr. Scott, it is your contention and the contention of Indiana that the rates from Illinois

are unjust and unreasonable in relationship to Indiana, which conclusion is predicated upon your determination of rate levels Indiana vs. Illinois, is that right?

A. That is correct.

Q. And since that is your fundamental basis, I want to ask you this question: Should you, upon a reconsideration of your figures here determine that the rate levels were the same, Indiana vs. Illinois, would it then be your position that the rates from Illinois as a whole against Indiana as a whole were not unjust and unreasonable?

A. You ask me for these figures, Mr. Vesey. I am not contending that that is the proper way to measure the rates between Illinois and Indiana.

Q. I didn't ask you that. I said if you should, on redetermination, find out the rate levels are the same, would you then change your position and concede they were not unjust and unreasonable as related to Indiana?

A. No, for this reason. I am not saying whether I would [fol. 1990] or would not. It is my opinion the method I have used in figuring my Exhibit 73 is proper and the rate levels from Indiana are higher than those from Illinois.

Q. Now, getting away from——

A. Wait a minute, I haven't answered your question.

Q. I am sorry.

A. But I do not contend that that is the one and only reason for asking the Commission to reestablish our differentials as they previously existed prior to the 1930-1932 adjustment.

Q. All right. Now, diverging from that just for a moment, I believe you testified that the transportation conditions Illinois vs. Indiana in the suspended territory were substantially similar?

A. That is right.

Q. Now, Mr. Scott, that being true, what other factor other than distance should the Interstate Commerce Commission consider, in your opinion, in determining rate relationships Indiana vs. Illinois?

A. Well, I think that one of the most important factors to take into consideration in establishing rates or differentals such as involved here is the competitive conditions between the various origin groups, and further it is important that the consumers at the various destinations be free to have different sources of supply and not one particular group or

two or three groups or one State. I think those are important.

[fol. 1991] I think that consideration should be given to the fact that the differential adjustment to the so-called Northwest territory, where the 30-cent differential, Brazil-Clinton under Southern Illinois exists, is a territory as a whole, and that Northern Illinois should not be singled out of that and the differentials made any different than the balance of that territory.

I think all those things should be taken into consideration in arriving at whether or not our contention here that our differentials should be restored is a proper contention.

Q. And when you use the term "competitive conditions," I assume you mean competitive conditions as you defined that term on cross-examination by Mr. Stadell?

A. That is right. I think you will find out, Mr. Vesey, by reading the records of the Commission—this is an additional fact—that the Commission itself has said that in a group adjustment distance is not a primary factor in considering the group adjustments as a whole.

Q. Now, as I understand your exhibits and your testimony, you said, first looking at Indiana as a group, that it was more or less a composite group of origin groups, looking at it as a whole; secondly, that Brazil-Clinton measured against Springfield to the suspended territory were substantially equidistant; thirdly, that in determining levels you should use the short tariff routes as set forth in your testimony. Now, are those three fundamentals right?

[fol. 1992] A. Those three are right, yes.

Q. Those three are right. Mr. Scott, if that be true and we wanted in this case to eliminate that inflation which might result from short-haul rates, what objection could there be to a consideration of rate levels Indiana as a group and Illinois as measured by the origin groups, excluding the short-haul groups, namely, Northern Illinois and Fulton-Peoria groups; or, stated in other words, the Springfield, Centralia, DuQuoin, Southern Illinois groups?

A. I don't agree with your contention, Mr. Vesey, that we can call, say, Fulton County a short-haul group when it has a distance of, say, 179 miles or some other similar figure in there. I think you would have to consider the State as a whole, as compared with Indiana as a whole.

Q. Now, if you used the Springfield and Southern groups in Illinois, you would have groups, would you not, which

had distances to the suspended points with the nearest group being equidistant to the nearest group in Indiana, and Indiana treated as composite, would you not?

A. I am sorry; I will ask the reporter to read that, please.

(Question read.)

The Witness: You would have—I don't get the point.

By Mr. Vesey:

Q. In other words, Brazil-Clinton and Springfield are approximately equidistant to the suspended territory?

A. Yes, I get that part.

[fol. 1993] Q. And all other groups in Indiana lie to the south of Brazil-Clinton?

A. Yes, sir.

Q. And all other groups in Indiana, excluding your short-haul groups, lie to the south of Springfield?

A. No, sir.

Q. They do not?

A. No, sir.

Q. What other groups, other than your short-haul groups, lie to the north of Springfield?

A. I wouldn't call them short-haul groups, but Peoria lies in there. Danville is east of Springfield.

Q. Well, isn't Danville part of Springfield and approximately equidistant to this territory?

A. Danville is not a part of Springfield, no, sir.

Q. I say, isn't it approximately equidistant to the suspended territory, Brazil-Clinton?

A. It may be. I think it is close enough.

Q. Well, can you think of a better yardstick to use in measuring levels Indiana vs. Illinois than the Illinois groups, Springfield south, Indiana groups, Brazil-Clinton south?

A. Yes, I think I can take a better one.

Q. What is that?

A. Total of the States compared.

Q. In other words, you think that the Fulton-Peoria, Atkinson, Alpha, Rushville, Northern Illinois groups ought [fol. 1994] to be thrown in in making that rate comparison?

A. Yes, they sell coal to the same places we do. Coal doesn't move from Southern Illinois and Springfield.

Mr. Wilkinson: Just a minute.

By Mr. Wilkinson:

Q. When you say coal doesn't move from Southern Illinois and Springfield, you mean it doesn't move from there solely?

A. That is correct. It moves from all the groups in Illinois.

Mr. Wilkinson: All right.

By Mr. Vesey:

Q. Now, did you ever make a comparison or a study to determine how your rate levels, Indiana vs. Illinois, would compare if you used Brazil-Clinton and the balance of Indiana and Springfield and the balance of the origin groups south of Springfield?

A. No, sir, I have not.

Q. And you don't think that would give a fair picture of the rate levels applicable from both districts to this suspended territory?

A. I would have to give that some study, Mr. Vesey.

Q. In other words, you can't answer that right now?

A. No.

Q. Would you object to making that determination for me when you appear back here on the stand?

Mr. Wilkinson: Yes, we would. You have a very competent rate man sitting at your side and he can make that from [fol. 1995] the same source of information that is available to Mr. Scott. We won't undertake to do it, Mr. Vesey.

By Mr. Vesey:

Q. Now, in measuring those rate levels Indiana vs. Illinois, do you have any preference born of factual reason for selecting one scale as against another for the yardstick?

A. No, sir. I believe, however, that probably the 23922 scale or the 26558 scale might be a little more preferable than some of the others. I don't know. There seems to be some criticism of the H & H scale, but I have no objections to using all three of them.

Q. Do you have an exhibit comparable to your Exhibit 73 wherein you show for your distances those distances computed by you rather than by the carriers?

A. Not to these competitive destinations, no, sir.

Q. Not to these destinations?

A. No.

Q. In other words, in so far as the length and breadth of your testimony is concerned, when it comes to measuring levels in order to have comparable exhibits, you must refer to Exhibit 73 as compared with the other rate level exhibits put in by the other parties?

A. No, sir, that is not true.

Q. What do we turn to?

A. I presented my own comparisons. This is more or less [fol. 1996] in the form of an exhibit prepared from the carriers' exhibits. The previous ones are my own comparisons. I put them in record here.

Q. Yes, but your own comparisons are based upon different destinations, are they not?

A. That is true, but there is nothing any more wrong with my destinations than there are with the carriers'.

Q. You mean they are both in error?

A. Well, I wouldn't say they are both in error. I might be more able to say mine are right and there might be some question about the carriers', if you want to get down to being facetious.

Q. Now, in computing your averages, one with respect to distance—or let's take distance first. In computing your averages with respect to distance, did you compute it in the same way that you made your computation on page 73, Exhibit 73?

A. Yes, sir.

Q. And you made your computation as to rates using the same formula that you used in making the computation on page 73?

A. Yes, sir.

Q. Now, I want to ask you several questions here just as a statistical expert.

A. I don't hold myself out to be an expert; just very ordinary.

Q. Well, just an ordinary statistician, then. What is your position, Mr. Scott, as to whether or not in balancing [fol. 1997] for example, distance against rates, you should use the same formula in ascertaining both?

The Witness: May I have that question read, please, Miss Reporter?

(Question read.)

The Witness: In my Exhibit 73, I have used the formula I did because to do it any other way would result in basing an average rate for the State on an average of averages which, in my opinion as an ordinary mathematician, is wrong; that an average of an average is not proper.

By Mr. Vesey:

Q. That isn't my question. My question is, do you think you ought to use the same formula for determining average distance as you used in determining average rate?

A. I didn't do it on here, Mr. Vesey, and I am trying to tell you why.

Q. I am not interested in why you didn't. I am asking you now, as a statistician, do you think you should use the same formula?

A. I will have to know to what you are applying the formula.

Q. Forget about what I am applying it to.

A. I will have to know it because there are different circumstances; I am sorry.

Mr. Vesey: If the Examiner please, I am asking this witness as a statistician just a few fundamentals without regard to any exhibits or the like.

By Mr. Vesey:

Q. Should you not, Mr. Scott, use the same method in [fol. 1998] determining your average distance as you use in determining your average rate?

A. You will have to give me a hypothetical question before I can answer that because the circumstances will make the answer different.

Q. In other words, you can't answer that question?

A. Yes, I can answer that my way. I can answer it if you will let me.

Q. Do you think, for example, Mr. Scott, that if you use a simple mathematical average in computing distance that you should use a simple mathematical average in computing the rate?

A. Are you talking about Exhibit 73, Mr. Vesey?

Q. No.

A. What are you talking about?

Q. Just about simple averages against simple averages in making comparisons.

A. I will have to answer that question by showing what I mean; I am sorry. Because if I give you an answer under one set of circumstances and you apply that answer to another set of circumstances, that is not my answer to the second set of circumstances to which you have applied it.

Q. You can't answer that?

A. I can answer it, yes, sir.

Q. Do you think that simple averages should be used comparably against simple averages? That is the question.

[fols. 1999–2000] A. Under certain circumstances yes, and under certain circumstances no.

* * * * * * *

[fol. 2001] Mr. Wilkinson: Now, what is a simple average?

Exam. Trezise: You tell him just what you mean by a simple average. You understand what a simple average is; of course you do.

The Witness: I think so, but sometimes I am confused as to whether Mr. Vesey and I understand what a simple average or what any definition of a term in mathematics is.

I want to make it very clear, Mr. Examiner, for this record, for the benefit of the Commission that will consider [fol. 2002] this record, that I am not either an expert mathematician or an ordinary mathematician. I do not hold myself out to be a mathematician of any kind. I merely make figures the way people ordinarily make them.

By Exam. Trezise:

Q. You can add up ten figures and divide them by ten; and would that be your idea of a simple average?

A. Yes.

Q. Is that correct?

A. Yes, sir.

Exam. Trezise: Now, with that in mind, that is what he thinks a simple average is.

By Mr. Vesey:

Q. Do you know what a weighted average is?

A. I know what I think a weighted average is, Mr. Vesey.

Q. What do you think it is?

A. A weighted average is distances that are computed by the route on which the traffic actually moved, and in my

opinion, my definition of a weighted average, as the definition has been used by the Interstate Commerce Commission in cases of this type; that is why I am so careful you and I don't misunderstand each other.

Q. Do you recognize any difference in the type of average, that average you have, for example, as shown in column 5 of your Exhibit 73, as compared with the kind of an average you have shown under column 10 of Exhibit 73?

A. One is an average of distance and the other is an [fol. 2003] average of rate.

Q. That is all that they mean to you?

A. You are averaging two different things.

Q. Now, in getting the figure that you have under column 10, using that just as an example, what that figure represents, does it not, is the total of figures under column 10 in lines 1 to 17, excluding line 6½, divided by the—or rather, lines 1 to 13, excluding 6—divided by the figure which you have in column 6 of 216?

A. No, I don't believe that that is true. My figure that I have under column 10, Mr. Vesey, is arrived at by dividing the figure under column 7, 36,141, by the figure under column 6 of 216.

Q. Yes.

A. Wait, that is wrong, sir. Where I referred to column 7, I should have referred to column 8 because we are talking about the average proposed rate, so it is the figure shown under column 8 of 36,704, divided by 216, gives me the average shown under column 10.

Q. Which means that you used the rates 216 times as a divisor?

A. Yes, 216 rates as a divisor.

Q. Yes. And when you then came to determining percentages, you total the figures in your column 4 and divide that by 2993?

A. Determining the average distance?

Q. Yes.

[fol. 2004] A. Yes.

Mr. Wilkinson: May I ask a question there, Mr. Vesey?

Mr. Vesey: Surely.

By Mr. Wilkinson:

Q. Were there 2993 different distances involved in making up this total of 825,980?

A. Yes.

Q. That is why you used the 2993, to get the average?

A. Yes, sir.

Q. And you did the same thing with your rate. There were 216 rates that went into making up this 37,604?

A. Yes, sir.

Q. And you divide by the number of rates that went to make up that total?

A. Yes, sir.

By Mr. Vesey:

Q. Didn't each of the origin points, the 2993, have a rate?

A. Yes, they did, but——

Q. So there were 2993 rates, weren't there?

A. No, sir, not in my opinion.

Q. How is that?

A. No, not in making up this formula.

Q. Well, there was a rate from each origin point, wasn't there?

A. Would you permit me to explain what I did?

Q. I know what you did. But there was a rate from each origin point?

[fol. 2095] A. I used the group rates. There is a different distance from each origin, but there is a group rate from all of it. So it is a group rate.

Q. Then when you get over to Indiana, instead of having 216 you had 74, didn't you, and instead of having 2993, you had 1064?

A. That is obvious.

Q. That is shown on your exhibit. The net result is that you had less figures to consider in measuring Indiana than measuring Illinois?

A. I only put down the rates involved in this proceeding, in issue in this proceeding and in this record.

Q. Will you turn to page 37 in your prepared statement, and going to the last—to the next to the last full paragraph on that page, my copy reads as follows: "The rate from Southern Illinois was reduced to 25 cents over the rates to Rockford, and the rates from the other groups, except the Fulton-Peoria group, established on the basis of the standard differential under Southern Illinois." Is that your testimony?

A. Yes, sir.

Q. And you still are of the same opinion at this time, are you not?

A. It is obvious what was done, the rates from the tariff. You can check them.

Q. And when you used the term "standard differential," [fol. 2006] you meant that differential which applied Fulton-Peoria under Southern Illinois of 79 cents at Beloit?

A. Yes, sir.

Q. In your consideration of the Fulton-Peoria group, I note that in your exhibits you did not put Atkinson in the Fulton-Peoria group, did you?

A. I showed it separately, I believe.

Q. At the prehearing conference there was some consideration as to the makeup of origin groups, was there not?

A. Well, there might have been some discussion. I don't remember anything very definitely.

Q. Wasn't the agreement reached at the prehearing conference that we would use the origin groups as shown in the carriers' tariffs for determining the points in the various groups?

Mr. Wilkinson: Now, just a minute. I believe that the Examiners who presided at that prehearing conference furnished all parties with a copy of the agreements reached in that prehearing conference, and I think that is the best evidence.

By Mr. Vesey:

Q. Just go on the basis of that. You are familiar with that statement?

A. I don't remember the details of it. It is more than a year ago.

Q. Don't you know that Atkinson in the Milwaukee tariffs is shown as being in the Fulton-Peoria group?

A. It is probably shown but it carries different rates to [fols. 2007–2010] a great many of these points and therefore is not a part of this group.

Q. It has the same rates to nearly all these points, hasn't it?

A. I don't think so, Mr. Vesey. I will be glad to look at the rates and tell you in just a minute. No, it has different rates to quite a number of most representative points.

Q. Well, just looking at it abstractly, Mr. Scott, and looking at it from the point of view, let us say that here are two

Commissioners trying to unscramble this scrambled-up mess, as it appears from the testimony here in the suspended territory. Let me ask you this question: Don't you think, as a matter of fundamental and practical approach, that the Fulton-Peoria origin group ought to include the single mine at Atkinson, the single mine at Alpha, for example, so that that group would be on a comparable basis with other groups in Indiana, other groups in Illinois?

A. Well, I probably could answer that question this way, Mr. Vesey, if you don't mind. You see, Alpha and Atkinson have a lower basis of rates than the Fulton County group going west into the Iowa district, across the Mississippi River, within 100 miles of Davenport, as prescribed by the Interstate Commerce Commission; and if it gets a preferential treatment in going west, I don't know but what that should be taken into consideration in considering rates from Atkinson and Alpha in going either east or north.

. . . . . .

[fol. 2011] By Mr. Vesey:

Q. Yes, I am just basing it, if one is correct on that assumption, then isn't this proposition correct?

A. Mr. Vesey, I would like to answer your question very much. I have been involved in the making of rates for a little while, I know something about them, and believe me that to answer a question that you have just asked me [fol. 2012] would require me to sit down and give a considerable study to the differential of one dollar per ton Fulton County under Southern Illinois to Davenport, and find the reasons for it. There may be reasons for that differential there that do not exist at Beloit. I don't know that.

By Exam. Trezise:

Q. Mr. Scott, can you just answer that without making a study of this? You can't make an intelligent answer to his question, to give him the information or answer that he desires?

A. Yes, sir, Mr. Examiner, I have said that before in answer to that same question. I said it at least four times today.

Q. Well, you agree with the Examiner's answer, substantially?

A. Yes, sir.

Exam. Trezise: Does that help you any, Mr. Vesey?

By Mr. Vesey:

Q. Now, you did testify with respect to the proposal here from the Atkinson mine to Beloit, didn't you, in your direct testimony?

A. I didn't say what it was.

Q. And you testified it was a reduction of 14 cents, Atkinson, didn't you?

A. That is right.

Q. Didn't you make a study of that in preparing these exhibits?

A. I included that in my study of the entire origin territory.

Q. And you were with the carriers, particularly of the Milwaukee Railroad, at the time that the Fulton-Peoria standard differential, as you refer to it, was disrupted, were you not?

[fol. 2013] A. Yes, in July, 1933, that is right.

Q. And you were part of the Committee that made the disruption, isn't that true?

Mr. Biaett: He stated he was not a part of the Committee that made the disruption.

Mr. Vesey: He said he was a member of the Committee.

Mr. Biaett: He said he wasn't——

Mr. Vesey: Query:

By Mr. Vesey:

Q. Were you or were you not a member of the Committee for the carriers that sat in at the time the disruption was made?

A. That is ten years ago and while——

Exam. Trezise: Answer the question.

By Mr. Vesey:

Q. Answer the question.

A. I was not a member of the Committee that decided what it should be. I had no authority to decide that.

Q. What did you do?

A. I did as it was recommended to me by the officers of the railroads.

Q. Oh, you mean the superior officers of the railroad?

A. Yes.

Q. Like the presidents and the president of the Board?

A. You mean traffic managers, Mr. Vesey. The presidents don't bother with these things.

Q. Then just getting it down to this mundane, prosaic [fol. 2014] world of ours, you were in on the disruption?

A. You see, I can't answer some of these questions yes or no, Mr. Examiner.

By Mr. Biaett:

Q. You were in on the disruption only in a ministerial capacity, were you not, Mr. Scott?

A. Yes, I was told what to do.

Mr. Biaett: Fine.

By Mr. Vesey:

Q. Now, what additional facts, Mr. Scott, do you have to have to tell me whether or not the 79-cent differential Fulton-Peoria under Southern Illinois is a reasonable minimum differential than those which you have in your possession by virtue of, one, your experience; two, the study which you made in compiling your exhibits?

A. Well, there *is* a lot of them, I am afraid, Mr. Vesey.

Q. What additional information do you need? Maybe I can supply it right away.

A. No, you would have to sit down and you would have to see the effect it would have somewhere else. You would have to take in the relationship not only the differential Southern Illinois vs. Fulton County; you have to give some consideration as to what it would do to the rest of the Illinois groups; you would have to take into consideration the other rates from Indiana, and as to the differential, as to whether that is a proper differential, one dollar, for example, or not; all those things. It just can't be answered offhand. It requires study.

[fol. 2015] We have tried in the past to decide what proper rates are or what proper differentials are to points and we didn't do it in an hour or in an afternoon.

By Exam. Trezise:

Q. You mean in solving one problem you would have to bring up another problem and then you would have to figure out a second problem and eventually you would have several problems to figure out, whether or not your initial premise was correct or incorrect?

A. That is correct, sir.

Q. That a problem is frequently not a single problem but it is composed of many problems, is that true?

A. That is true.

Q. Is that what you mean when you say you can't give him an intelligent answer on that?

A. Yes, sir. That is particularly true, I think, in freight rate adjustments.

By Mr. Vesey:

Q. Mr. Scott, if you are not going to include the origin point Alpha in the Fulton-Peoria group, and a consideration of your exhibits and the carrier exhibits show that Alpha and Atkinson, for example, are much shorter in distance than the suspended points, are we to understand that it is your position that Alpha and Atkinson should have lower rates than apply from Fulton-Peoria?

A. No, not merely a difference in distance wouldn't warrant that. The difference might be only a couple of miles.

[fol. 2016] Q. In other words, you want them to take the same rates but you don't want the group to have the benefit of the shorter mileage in determining differentials or distances for that group against other Illinois groups or as against Indiana groups, is that your point?

A. I don't want them to take into consideration the shorter distance?

Q. Yes.

A. Distance should be taken into consideration.

Q. No, I said you don't want to put Alpha and Atkinson in the group, as I understand it; neither do you want to accord Alpha and Atkinson lower rates because of their shorter distances, is that correct?

Mr. Wilkinson: Just a minute. I object to that question because it assumes something that this witness hasn't testified to, either on direct or cross-examination, and is

putting other assumptions into the witness's mouth that he has not testified about, and I object to the question.

Mr. Vesey: Oh, if the Examiner please—

Mr. Wilkinson: It is entirely outside the scope of my direct examination of the witness.

Mr. Vesey: Oh, I beg your pardon, Mr. Wilkinson. Your exhibits show the mileages here and it shows the rates, and the witness says he compiled them and he put the exhibits into the record; it is his testimony. I assume he [fol. 2017] knows what his testimony is.

Mr. Wilkinson: Just a minute. The exhibits show Alpha, Atkinson, and these other groups, true; but the witness did not testify one way or the other as to whether they should be separate or should be included in the Fulton County group or the Southern Illinois group or any other group; expressed no opinion on that subject. He showed what the tariffs show with respect to rates and distances from those origin points.

Exam. Trezise: And now Mr. Vesey wants to ask him whether, going outside of his direct, if it is outside, he wants to ask him whether or not Alpha and Atkinson should be included with Fulton-Peoria in going to destinations in Northern Illinois; I think that is what Mr. Vesey has in mind.

Mr. Vesey: Exactly.

Mr. Wilkinson: He said he testified on that in his direct examination. He gave no evidence on that subject whatsoever.

By Exam. Trezise:

Q. Well, Mr. Scott, could you answer the question that the Examiner undertook to formulate?

A. As I understand it, sir, your question is whether Alpha or Atkinson should or should not be considered from the Fulton County group or be put into the Fulton County group to these destinations.

Q. Yes; you said a while ago that Alpha and Atkinson had an advantage going west under Fulton-Peoria; and now, going north, Mr. Vesey, as I understand it, wants to [fol. 2018] know if Alpha and Atkinson should be included in the Fulton-Peoria group, or whether they should have

an advantage if they have a less distance. I don't know whether it is less or not.

Mr. Vesey: That is right.

By Exam. Trezise:

Q. Less distance than Fulton-Peoria.

A. Well,—

Q. Do you want to express yourself on whether or not those two points should be included in the Fulton-Peoria group?

A. Frankly I don't know whether they should or they should not. It would seem to me that that would be a question more appropriately directed to the carriers serving those groups rather than the State of Indiana.

Exam. Trezise: I am through. Go ahead.

Mr. Vesey: I am too. That is all.

Exam. Trezise: Let's see how we stand here. I think we will take a few minutes' recess.

(Recess taken.)

Mr. Dugan: If the Examiner please, I have one question I would like to ask; Larry Dugan, appearing for the Trustees of the Milwaukee Railroad.

Exam. Trezise: Mr. Dugan.

By Mr. Dugan:

Q. Mr. Scott, it is my understanding that in response to a question of Mr. Vesey you stated that the so-called compromised short-haul rates in Indiana applied for up to approximately 125 miles, is that correct?

[fol. 2019] A. No, that is not exactly correct. The compromise short-haul rates as agreed to in that adjustment applied for distances up to 50 miles and not up to 125 miles. That was the distance specifically mentioned in the compromise agreement for the short-haul rates.

Mr. Dugan: That is my understanding of the facts too.

By Mr. Vesey:

Q. Do you mean by that, Mr. Scott, that all rates for distances over 50 miles should be on a group adjustment basis?

A. In Indiana, yes, sir.

Q. Does that square with your theory that they should be?

A. Well, I suppose, Mr. Vesey, we would have to apply it with the distance of 50 miles whether it is more or less to the particular short-haul territory that would be under consideration. You would have to really take into consideration the other mining groups with relation to those destinations and the other destinations nearby there.

Q. In Indiana, 50 miles is the border of your short-haul territory?

A. That is correct, yes, sir.

Q. Shouldn't that also apply in Illinois when you are considering Illinois vs. Indiana?

Mr. Cardy: I object to that. There are different conditions. That is too broad a question to be answered, because the conditions in Illinois and Indiana on short-[fol. 2020] haul traffic are entirely different.

Mr. Vesey: Where does that appear in the record, Mr. Cardy?

Mr. Cardy: Well, I know, but—

Mr. Vesey: I say, where does that appear in the record?

Mr. Cardy: I think Mr. Scott—

Mr. Vesey: No, I am asking you; where does that appear in the record?

Mr. Cardy: Well, Mr. Scott has testified it is 50 miles in Indiana, and the record shows it is about—this record here shows that the short-haul extended about 130 miles, rates.

Mr. Vesey: If the Examiner please, I submit there isn't one scintilla of evidence in this record which supports that statement.

Exam. Trezise: Well, regardless of the objection, I shall rule that the question should be answered if it can be answered. Mr. Scott probably knows the answer to it.

The Witness: My answer to the question is, should the short-haul distance in Illinois be limited to 50 miles the same as it is to Indiana?

By Mr. Vesey:

Q. Comparing Illinois with Indiana.

A. If the circumstances in Illinois were different, I would say that possibly some consideration might be given to a

greater distance than 50 miles, but whether that should be done or not, I say some consideration should possibly be given to it.

[fol. 2021] Q. Just stated simply, unless the variance is shown in conditions, the principle should be the same?

A. Yes, I think that would be true.

Mr. Vesey: That is all.

Exam. Trezise: Do we have further questions? Mr. Boden?

By Mr. Boden:

Q. Mr. Scott, do the Indiana operators ship any coal to Beloit, Wisconsin?

A. Yes, sir.

Q. Do you have any knowledge of the amount of that tonnage?

A. I don't recall it. It is in the record.

Q. In this record?

A. Yes, sir.

Mr. Boden: That is all.

Exam. Trezise: Mr. Wood.

By Mr. Wood:

Q. Mr. Scott, yesterday morning you testified that the different rates could not be established by mileage alone, and several times since then you have made that statement.

A. Differentials, did you say, Mr. Wood, so I will understand your question?

Q. That is right. Now, assuming that two origin points, for instance, Linton-Sullivan to Freeport and Belleville to Freeport are the exact mileage—they are approximately the same, are they not?

A. I don't know. I will look it up.

Q. Well, assuming that they are exactly the same mileage, [fol. 2022] that in your opinion, would eliminate the consideration of mileage in fixing the differential between the two, is that right?

A. Would it eliminate—

Q. As one of the factors?

A. No, it wouldn't eliminate the consideration of mileage, but in my opinion, in arriving at the differentials, you would

have to consider the Illinois and Indiana groups as a whole and not pick out one group here or one group there.

Q. All right.

A. I think that is a very important thing, Mr. Wood.

Q. Then that was one group in Indiana, is it not?

A. Brazil-Clinton?

Q. Right.

A. Is one group in Indiana?

Q. Right.

A. Yes, sir.

Q. And Linton-Sullivan?

A. Yes, sir.

Q. Belleville is a group?

A. Yes, sir.

Q. All right. Now, assuming that you have exact mileages as between Belleville and Freeport and an Indiana group and Freeport, then your consideration in fixing the different rates, differentials, would be based upon the other factors, is that right?

[fol. 2023] A. Would be based upon consideration given to the distance. That is a factor but not a primary or important——

Q. Now, we are assuming the mileage is exactly the same.

A. I understand that.

Q. And you testified yesterday with respect to one point where the mileage was 11 miles difference, the two mileages were 11 miles difference, that that was inconsequential, did you not?

A. I don't remember, but I may have.

Q. All right. Then assuming that the two distances are exactly the same, or less than 11 miles, that would eliminate the distance factor from your consideration in establishing the two rates.

A. No, sir, that wouldn't eliminate it. The mere fact that they are equal would not eliminate the distance as one of the factors, but not the most important or primary factor.

Q. Then how much weight would you give to the distance factor?

A. I would have to know the other circumstance and sit down and figure that out.

Q. What other circumstances?

A. Well, I will give my answer again along those lines. I think the most important factor to take into consideration in establishing rates or differentials such as we have in this proceeding are, first, that we must give consideration to the competitive conditions between the various origin groups. Then I think consideration should be given to [fol. 2024] the consumer who buys the coal and ultimately uses it, so that he is not held down to one source of supply, one particular group in Illinois, one particular group in Indiana or one or two groups. He would have access to coal in Illinois and Indiana, purchase the coal from those origins.

Q. I don't want to set you off, Mr. Scott. We have been all through that and I am not asking that you fill the record more with the repetition of those same factors.

A. But you asked the question, Mr. Wood; I am sorry.

Q. You haven't answered the question. I will restate it. Now, assuming that there are more factors than you enumerated yesterday and today and the day before, which I think were four or five, I have counted, assuming that there would be ten factors in establishing a rate—you can assume that, can't you?

A. Yes, sir.

Q. And one of those factors is distance, right?

A. Yes, sir.

Q. Now, assuming that all other of the nine factors are identically the same, then as an expert you would establish that rate or the two rates in consideration of the difference in distance?

A. Well, in the first place, I don't establish rates; and in the second place, I am not an expert.

Q. Well, then I——

A. But——

[fol. 2025] Mr. Wood: Just a moment, Mr. Examiner. This witness has qualified as an expert. If he is not an expert, we will have to move to strike the whole testimony, his entire testimony. He qualified himself as an expert. I am addressing a hypothetical question to his expert opinion.

Exam. Trezise: Did some one object to it?

Mr. Wood: Shall I restate the question?

Mr. Wilkinson: He objected. The witness said, "I am not an expert." He has given his experience and on the

basis of that experience he has testified. Now, whether that experience makes him an expert whose opinion the Commission——

Exam. Trezise: You mean an expert on that particular thing or an expert on anything?

The Witness: Well, I don't know, Mr. Examiner, just what certain people will consider an expert. I think there is probably a variance of opinion as to what constitutes an expert.

Mr. Wood: All right, then.

By Mr. Wood:

Q. Assuming again that there are ten factors on which you would recommend a rate, a certain rate, as compared to another rate, and in consideration of those two rates in each instance on the one hand, nine of those factors are exactly the same as the nine factors on the other hand, leaving only the one factor, distance, to consider, and there was a difference in the mileage, then you would recom- [fol. 2026] mend those two rates to be established in consideration of that difference in the mileage?

A. No, sir, I wouldn't, because those——

Q. On what factors would you make your recommendation?

A. It is true, Mr. Wood, your question is a hypothetical question. But even though the factors may be identical, there may be degrees in there which would warrant different considerations.

Q. Now, we are assuming that every degree is the same, exactly the same.

A. Rate history, there has been the same rate differential for twenty years and all that, taking all those into consideration; such as two points in the same—the two points were in the same group. Do I understand that to be what you have in mind?

Mr. Wilkinson: As I understand the question, you include every known factor that could enter into the rate?

Mr. Wood: And every degree of it.

Mr. Wilkinson: And every degree of it, and then the only thing you have dissimilar is distance.

The Witness: Well, if there wasn't any vast difference in distance, then I should say they should be given similar treatment.

By Mr. Wood:

Q. Then if an Indiana group was exactly the same distance to a destination that the Belleville group *has*, exactly the same, then we would disregard the distance factor and consider the other nine factors in recommending a rate for [fol. 2027] each or a relationship between the two, is that right?

A. No, sir.

Q. What would you consider?

A. I would say you would give consideration to the distance factor along with others, but the distance factor is not the primary or most important factor.

Q. We have eliminated that, Mr. Scott.

A. You have eliminated distance?

Q. It is exactly the same, yes, sir.

A. And you have got the other——

Mr. Wilkinson: Now, just a minute. Read the question, please, that was asked of the witness.

(Record read.)

Mr. Wilkinson: I submit the answer is responsive to the question.

Mr. Wood: Well, he hasn't answered that yet.

By Mr. Wood:

Q. What would you consider?

Mr. Wilkinson: He would consider all the factors, he said.

The Witness: I would consider all the factors.

By Mr. Wood:

Q. All the other nine factors?

A. Yes, sir.

Q. Now, of those nine factors, assuming that the Linton-Sullivan Group is exactly the same distance from Freeport as is the Belleville group, then what factors are there, in [fol. 2028] your opinion, that call for a ten-cent differential between the rates Linton-Sullivan vs. Belleville?

A. Well, here is my answer. I first take competitive conditions between the various origin groups——

Q. No, we just have two origin groups we are talking about.

A. All right, between the two origin groups, if you want to consider the two separate from the rest. The importance of the consumers being able to go to these two groups, the differential or rate history standing back of those rates from the two groups over a long period of years. I think those are three and probably — would be others if I thought long enough.

Q. All right, let's take the first one. What are the competitive conditions?

A. Ability to sell coal in competition with each other. You must consider whether they can or cannot sell coal in competition with each other. The person in establishing that would possibly give some consideration to the fact that their coal does or does not move in there because of the quality of their coal or something of that sort.

Q. Now, have you made a study of the competitive differences as to Linton-Sullivan into Freeport and Belleville into Freeport?

A. No. My study has gone more to the groups in general rather than individual groups, Indiana on the one hand and Illinois on the other.

Q. You have made no competitive study?

[fol. 2029] A. Not those — two districts, no.

Q. Now, as to your second point, as to furnishing the consumers in that area a wider, more sources, a wider range of sources of supply; that is your second factor?

A. Yes.

Q. Now, what study have you made as to the requirements of the consumers in Freeport as to what sources of supply they have, what types of coal they use?

A. I know that the—I haven't made any at the particular industries in Freeport but I know that the coal sells in competition. We have two groups in mind, Belleville and Linton-Sullivan, as I understand it, that is all we are talking about and I would say this, that having two groups only in mind, it would be of the utmost and primary importance to see the sources of supply for the city of Freeport would not come from one of those two groups, that if there were only two groups that could supply the coal, they have a right to secure their supply from either of the two groups and not at an exorbitant cost.

Q. But you haven't made a study personally.

A. I think my general experience would give me an idea of that, but I haven't sat down and studied it out as you would probably have in mind.

Q. Well, how much has Freeport been involved, in your general experience?

A. Oh, considerably. I have been interested in that ton-
[fol. 2030] nage into Freeport for a long time.

Q. Have you been there?

A. I have been in Freeport, yes.

Q. Have you made a survey as to the requirements and demands and likes and dislikes of the consumers there, and their need for various sources or increased sources of supply of coal?

A. I have known that from my own general knowledge: not from a specific study made from going to Freeport.

Q. How many sources of supply do they have today?

A. Oh, they have all the mines in Illinois and the mines on the Milwaukee for the most part in Indiana, because of the differentials. They can get coal, of course, from any source if they are willing to pay the great differences in freight rates. I admit that.

Q. Do they have more sources today than they had ten years ago?

A. Yes.

Q. And do they need more sources today?

A. I think they could use them, yes, sir.

Q. When did you make a study that caused you to arrive at that conclusion?

A. I said I thought so.

Q. You made no study?

A. No.

Q. Now, as to your third factor, that, I believe, was history.

A. That is right.

[fol. 2031] Q. Now, we are still talking about the ten-cent differential and the justification for it between Linton-Sullivan and Belleville groups into Freeport.

A. Yes, sir.

Q. Now, what, in the history of rate-making, justifies a ten-cent differential, in your opinon?

A. The fact that the rate history will show that to this entire Northwest territory and what is known—where the differential is Brazil-Clinton or Linton-Sullivan under Southern Illinois of 20 cents. That differential, the adjust-

ment has existed for a long number of years. The operators of coal in the various groups that sell coal to most of this destination territory, except in Northern Illinois where it was disrupted by the reduction in rates from the Illinois mines, and consideration, in my opinion, should be given to that history of rates to Northern Illinois.

Q. Then may I summarize your statement by saying that because it has been there that long, it must be good?

A. I think that you will find the Commission has said in their decisions—I base my theory partly on what the Commission has said in some of their decisions, that an adjustment, a group adjustment is assumbed to be all right until it is proven to be wrong, and we did not have—when the differential adjustment in 1930-1932 was disrupted, there was nothing wrong proven with that differential adjustment that had existed prior to that time. It was brought about [fol. 2032] by the action of the Illinois Commission using the rates from the Illinois mines to these destinations without any consideration being given at all to the rates or differentials from the Indiana groups.

Q. Do you personally, in arriving at an opinion, regard the existence of a differential as something sacred?

A. A standard differential, yes.

Q. Do you give it that much weight?

A. I think that is important.

Q. Now, you testified yesterday that you felt that a difference of 11 miles was negligible. Now, would you say twice 11 miles, what was that point to Rockford from—what was some point there in one group as compared to Springfield, I believe it was; Springfield to the twelve destinations? Rockford; 11 miles.

Or stated hypothetically, if the distance were twice 11 miles, 22 miles, would that still be negligible?

A. I think so for the difference in distance of these hauls—I mean the distance of these hauls.

Q. Now, what about 111 miles? Would that be negligible?

A. No, I think——

Mr. Cardy: Mr. Wood, are you talking about mines in the same district or——

Mr. Wood: I am talking about the difference in distances as of one group to a destination, compared to another group to a destination.

[fol. 2033] Mr. Cardy: And not between mines in the same group?

Mr. Wood: No, no.

By Mr. Wood:

Q. Now, would the difference of 111 miles negate the distance factor in consideration of rate-making?

A. Well, you might, when you get up to 111 miles, you would probably want to give some consideration, whether it should be the same or should be different.

Q. Now, where between 22 and 111 miles or between 11 miles and 111 miles, do you begin to place weight upon the distance factor?

A. Well, that is something I would have to sit down and make a pretty good study of, Mr. Wood, before I could answer that.

Q. But you are sure that anything up to 11 miles is negligible?

A. For the distances involved in here, yes.

Q. And you are not positive that 111 miles would be a forceful factor but you think it may?

A. I think you have stated it the way I would want to put it.

Q. And when did you arrive at those two opinions, first, as to the 11 miles being negligible? When did you arrive at that opinion you stated yesterday morning?

A. Well, now, let me see.

Mr. Wilkinson: Oh, I object to that question as being utterly immaterial, having no bearing in this case, when he arrived at an opinion that 11 miles in a situation like this was negligible, of no consequence.

[fol. 2034] Mr. Wood: Well, if Mr. Wilkinson does not like the question, I will withdraw it.

Mr. Wilkinson: It is not that I dislike it; I object to it as being immaterial.

By Mr. Wood:

Q. And ask him when he arrived at the opinion as to 111 miles.

Mr. Wilkinson: I also object to that question as being immaterial.

By Exam. Trezise:

Q. Did you arrive at that conclusion?

A. He asked me a hypothetical question and I have been answering it.

Q. Well, he asked you when you arrived at this conclusion. It is a hypothetical question; all right.

A. When he asked me that question of 111 miles, I arrived at that about three minutes ago, when he asked me about 111. I never gave consideration to that before.

Mr. Wood: Thank you. That is the answer I want.

By Exam. Trezise:

Q. Well, you think there ought to be a difference in rates when there is a difference of 111 miles, is that right?

A. I say when you get that high, you have to sit down and give some consideration to it.

Exam. Trezise: All right.

By Mr. Wood:

Q. Now, you are contending here, according to your statement, that Indiana groups are prejudiced and Illinois [fol. 2035] groups are preferred as to this territory. Now, what if any business do you know of that mines in the Indiana groups have lost to mines in the Belleville group in this territory under consideration?

A. I can't put my finger on any specific piece of business.

Q. Have you made a study or a search of any kind to determine if any business has been lost by Indiana to Belleville at these destinations under consideration?

A. I can't name any particular piece, no, sir.

Q. Did you ever hear of any specific business?

Mr. Vesey: Oh, I object to that if the Examiner please. That has all been covered. As I understand Mr. Scott, he has testified here that he knew of no particular business lost by Indiana to Illinois.

By Mr. Vesey:

Q. Isn't that right, Mr. Scott?

A. Any specific piece of business, any particular consumer?

Q. That is right.
A. That is right.

Mr. Christensen: At the destinations in Northern Illinois involved.

The Witness: Yes. I know there has been tonnage lost but I can't tell you any specific pieces of it.

By Mr. Vesey:

Q. You mean you don't know whether it went to Illinois, to West Kentucky, to Iowa, to the East, do you?
A. Well, I think Indiana has lost it to Illinois, yes, sir.

[fol. 2036] By Mr. McElroy:

Q. That is, you heard of its being lost?
A. I heard of it from our operators, in reduction of tonnage figures.

Mr. Vesey: Skip that.

By Mr. Vesey:

Q. You don't know of any specific loss yourself?

Mr. Wood: Then you are asking the very question you objected to my asking.
Exam. Trezise: Then you are in agreement.
Mr. Wood: The answer is no.
Mr. Vesey: I asked him about his knowledge.
Mr. Wood: The answer is no to my question.

By Mr. Wood:

Q. You don't know of any?
A. I don't know of any specific piece of business, Mr. Wood, that has been lost by Indiana to the Belleville operators.

Mr. Wood: That is all I want to know.
Exam. Trezise: Do we have some further questions of Mr. Scott?
Mr. Cardy: I have a question.
Exam. Trezise: Mr. Cardy.

By Mr. Cardy:

Q. Mr. Scott, the Carriers' Exhibit 4, Section 3, page 6, shows the rate from the Fulton-Peoria District of $1.50

and the haul is 132 miles; 132.5 miles. Can you give us any information as to whether that particular rate has any effect whatever on the Indiana rate adjustment, Indiana [fol. 2037] points in Northern Illinois or to Dixon?

A. I would have to look at this.

Q. That is the rate of $1.50 from the Fulton-Peoria District to Dixon, Illinois; whether or not that specific rate has any particular effect upon the movement of the coal, say, from Indiana that you know of, that you have any knowledge whatsoever about?

A. No, sir.

Q. And I understand that you represent about 90 per cent of the producers in Indiana?

A. I represent the producers producing 90 per cent or more of the tonnage produced on rail mines in the State of Indiana.

Mr. Cardy: That is all.

Exam. Trezise: Mr. Marks, do you have a question?

Mr. Marks: Yes, sir.

By Mr. Marks:

Q. Mr. Scott, in reply to Mr. Vesey, you said, I believe, that you might be able to add Evansville to your Exhibit No. 73.

A. Yes, sir.

Q. Now, if you do add Evansville, you will have all of the Midwestern groups except West Kentucky, will you not?

A. Yes, I believe that is right.

Q. Would you be willing to add West Kentucky also while you are adding Evansville?

A. No, I am afraid I couldn't, Mr. Marks. It would take [fols. 2038-2039] several days to work up that information.

Q. Would you if I work up the figures?

A. Yes, but I would hesitate to testify to those figures because I would be subject to cross-examination.

Q. Would it require any more time to figure West Kentucky than it would Evansville?

A. Yes.

Q. I will say it won't. It is just one line. It can be done in about ten minutes.

That being true, will you undertake to do it if you can?

A. I will be subject to cross-examination on them, and that is why I hesitate to do it.

* * * * * * *

[fol. 2040] Mr. Bather: I beg your pardon.

By Mr. Marks:

Q. In reply to a question that I asked this morning, I believe you stated that you were unwilling to have the so-called Blue Book differentials restored between Indiana and West Kentucky because, in your opinion, operating conditions between Indiana and West Kentucky are different.

A. Yes, sir.

Q. Now, do I understand it is your view that operating conditions in Western Kentucky are more difficult than in Indiana?

A. That is my opinion.

Q. How did you arrive at that opinion?

A. From principally, I would say, from the evidence offered in the Western Kentucky case by competent operating witnesses and from my own general knowledge, slight general knowledge of transportation conditions, particularly where I can testify that the transportation conditions between Illinois and Indiana are similar. But I cannot do that with respect to—I believe otherwise, with respect to operating conditions between Illinois and Indiana on the one hand and Western Kentucky on the other.

Q. Do you hold yourself out to be familiar with operating conditions in Western Kentucky?

A. No, sir.

Q. Have you ever worked in the Western Kentucky Field?

A. No, sir.

Q. Have you ever worked for any railroads operating [fol. 2041] in that field?

A. No, sir.

Q. Have you ever worked in the operating department of any railroad?

A. Yes, sir.

Q. In the operating department?

A. Yes, sir.

Q. Do you have any information as to tonnage ratings from Western Kentucky as compared with Indiana?

A. Not here right now, no, sir. I have seen them but I don't know them.

Q. You do not, then, have any information of your own knowledge, from your own investigation, as to operating conditions in Western Kentucky?

A. I have an opinion. I expressed it as such, Mr. Marks.

Q. Was that opinion gained from your own investigation or from reading and hearing testimony of other witnesses?

A. Reading and hearing testimony of other witnesses.

Q. It is second hand information, then?

A. Well, it was introduced in evidence before the Interstate Commerce Commission, and I heard it while it was introduced and I was a party involved in that proceeding.

Q. In what case do you have particular reference?

A. Docket 28629 and Docket 28689.

Q. You participated in those cases?

[fol. 2042] A. Yes, sir.

Q. Do you recall the evidence presented by the Western Kentucky interests in those cases, that the tonnage ratings from the Western Kentucky Field to Chicago by way of Mattoon permitted trains of 90 to 100 cars to be operated over the single line of the Illinois Central Railroad?

Mr. Wilkinson: I object to that.

Mr. Marks: I asked him that. He said he participated in that hearing, he is familiar with it, and I asked if he recalled hearing that evidence.

Exam. Trezise: Now, he did not testify to that in this other case and he doesn't know anything about it and that is in another record; even if he did hear that thing, that wouldn't be evidence here.

Mr. Marks: If he doesn't know anything about it, that is all I want to find out.

Exam. Trezise: You can't make that evidence here unless you have some witness to testify to it.

By Mr. Marks:

Q. Now, I would like for you to refer, please, to your Exhibit 73. Suppose we look at column 9. Now, assuming that the rates from Southern Illinois to the twelve destinations will not be changed as the result of this hearing and will remain $2.06 on the average, what rate, under your theory, would be made from the Brazil-Clinton group to the same destinations?

[fol. 2043] A. Rates that would reflect to each individual destination a differential of 30 cents under Southern Illinois.

Q. And that would make the Brazil-Clinton rate $1.76, would it not?

A. On average rates, yes.

Q. Now, what would you do with the Danville rate if you got $1.76 from Brazil-Clinton?

A. I don't know what I would do with it. I wouldn't be interested particularly in doing anything. I don't understand, Mr. Marks.

Q. Would you be willing to concede that some change would have to be made in it to avoid 4th Section departures?

A. I would have to check that up. I doubt it. I think Danville is——

Q. You think it would be entirely proper to make no change in the tariff rate of $1.82 if $1.76 is established from Brazil-Clinton?

A. You can't have a 4th Section violation, Mr. Marks, on the basis of average rates. You have got to have the rate, and I don't believe that if Brazil-Clinton were put on its differential of 30 cents under its present rates from Southern Illinois, it would result in any 4th Section departure, because I believe and I am sure that rates from Danville were reduced the full amount in 1930, as shows from Southern Illinois and Springfield, and therefore, in my [fol. 2044] opinion, there would be no 4th Section departures in the event the rate from Southern Illinois would remain the same as it is today and the Brazil-Clinton rates made 30 cents under rates; Southern Illinois.

Q. You think that would be a fair adjustment, to have a $1.76 rate from Brazil-Clinton and a $1.82 rate from Danville?

A. Yes, sir, I do, on the present rates.

Q. Notwithstanding that Brazil-Clinton is 33 miles further distance than Danville, as shown by column 5?

A. Well, if they warranted it and wanted to reduce the rates from Danville and the carriers wanted to reduce the rates from the Danville group to the Brazil-Clinton basis, I don't know whether I would have any objection or not. I would probably look into the rate situation, have the individual groups give me something to work into an average rate.

Q. Now, continuing further under your proposed basis, what would Boonville be if the Brazil-Clinton rate were reduced to $1.76, as shown under your column 9?

A. $1.56.

Q. $1.96, wouldn't it be?

A. Or $1.96.

Q. Now, have you given any consideration to the resulting differentials between Boonville and West Kentucky if Boonville is reduced ten cents and no change is made in West Kentucky?

A. I haven't. My exhibits have been based on the relationship throughout—and my contentions throughout the [fol. 2045] proceeding, between Indiana on the one hand and Illinois on the other.

Q. Now, I believe in reply to my question this morning about your objection to any reductions from West Kentucky, you said that those differences between Indiana and West Kentucky were fixed in the so-called Indiana-Illinois coal case of 1927?

A. Yes, sir.

Q. Now, then, if they were fixed in 1927, wouldn't you upset those differentials that were fixed in 1927 if you reduced Boonville ten cents without any change from West Kentucky?

A. No, sir.

Q. Why?

A. Because the differentials from Illinois-Western Kentucky were made 35 cents over the rates from Illinois, I believe, back at that time. I am not sure about that. I had better not state that. I don't recall now. I would have to look at the rate history for a moment to tell you, Mr. Marks, if you don't mind.

On August 1, 1932, the rates from Western Kentucky were reduced to the basis of 35 cents over Southern Illinois and at that time no reduction was made in the rates from Boonville.

Q. Now, then, if you do get your reduction that you are asking for from Boonville, you will have a rate of $1.96 from Boonville, and if the rates from Danville are reduced to $1.76, as you contend might well be proper, there will be a spread of 20 cents between Danville and Boonville, will there not?

A. Yes, sir.

[fol. 2046] Q. Now, according to column 5, the difference in distance between Danville and Boonville is 165 miles. Do you consider a 20-cent differential proper for 165 miles?

A. You are taking the Danville group and relating it to the Boonville group, and you are also taking an average rate here and talking about the differentials under an average rate from various groups to various destinations

as a whole. I think that the question cannot properly be answered on the basis of an average rate. It would have to be answered on the basis of individual rates to individual points.

Q. Do you mean you have departed from your group basis and come back to making rates from individual points in the groups?

A. I don't believe in making differential rates on an average rate, Mr. Marks. These are average rates to show the levels. I don't believe the differential should be based on the averages. They should be based on the rates as they are published.

Q. Let's get away from the 12 and take any one point.

A. That is exactly what I want to do.

Q. Won't you still have a difference of 20 cents in your rates?

A. Yes, sir.

Q. For those distances by either a rate higher than or a rate less than this difference shown on this exhibit of 165 miles?

A. Let's get a difference to a point and talk about it. I can talk much more intelligently on that than I can on averages. You see, I don't believe in making differentials [fol. 2047] on average rates, that is not my theory, average rates, and that is what you were trying to bring out with me, I believe.

By Mr. McElroy:

Q. Or average distances?

A. Average distances from the groups is different, but I mean average destinations.

Q. You have to take in the competitive situation between the various groups?

A. Yes, sir. But Mr. Mark's questions were directed to me as to actual differences in distances that exist under average rates to representative destinations.

Q. So you are not undertaking to say that the 20-cent differential for 111 miles would be justified or not justified? You would have to consider the groups, the history of the groups, the competitive situation as between the groups?

A. That is right, yes, sir.

Mr. Marks: All right.

By Mr. Marks:

Q. Now, as I understand, you feel that Boonville might well be reduced somewhat below what it would otherwise be because of a competitive situation?

A. Not what it might otherwise be, no; what it should be.

Q. All right, what it should be. Now, if competition is proper in reducing Boonville because of its great distance from the markets, why wouldn't competition be of equal weight in making our rates from West Kentucky to the same destinations?

A. It would have some bearing but the other factors [fol. 2048] must be taken into consideration also. You cannot get away from those other factors.

Q. Now, what are those other factors?

A. Transportation conditions. That is one, and the situation that you are just outlining, in my opinion, is a most important consideration.

Q. Well, have you given any consideration as to what would be the result if you did get your ten-cent reduction from Boonville as compared with Western Kentucky?

A. I think we would be on a proper basis with West Kentucky then, because it got its reduction of 35 cents over Southern Illinois.

Q. I believe you testified West Kentucky is 35 cents over Southern Illinois?

A. Yes, sir.

Q. To these destinations?

A. Yes, sir.

Q. And your proposed rate from Boonville is ten cents under Southern Illinois?

A. Yes, sir.

Q. Or a proposed differential of 45 cents between Boonville and West Kentucky?

A. That is right.

Q. Now, the Carriers' Exhibit No. 11 also, according to my computations, shows an average distance of 432 miles [fol. 2049-2050] from West Kentucky to these twelve destinations. That is 43 miles over Boonville. I will ask you, as a rate man, not as an expert, whether in your opinion 45 cents for 43 miles is proper, considering that it is the most distant group in the basis?

A. Forty-five cents difference for 43—I didn't follow your figures when you called them off of Exhibit 11. I would like to see them, Mr. Marks, if you please.

I come back to this point where I can say that the differential of 45 cents is or is not proper because distance alone should not govern the propriety of that differential.

Q. Doesn't it appear high?

A. Not when you take other factors into consideration, no, sir.

[fol. 2051] Exam. Trezise: How long will it take you to ask your questions?

Mr. Bather: Five minutes.

Exam. Trezise: All right, let's give it five minutes.

By Mr. Bather:

Q. Mr. Scott, you testified that by reason of the decisions of the Illinois Commission in 1930 and 1932, the differentials in Indiana were disrupted. You understand, of course, that the Illinois Commission could not issue an order requiring the Indiana lines to maintain those differential relationships?

A. Yes, sir.

Q. What effort did your organization make to have that situation adjusted?

A. We have participated in three lengthy proceedings, several of the proceedings going over a period of two or three years. We have been in constant negotiation with the carriers for voluntary adjustment in those rates. I do not believe there has been any time for more than a period of a few months when that matter of straightening that out has not been the subject of negotiations, either formally or informally.

Q. And that situation was partially corrected by the publication of the 17-cent rates in the reduction from the Brazil-Clinton and the Linton-Sullivan Districts?

A. On the Milwaukee Railroad?

[fols. 2052-2127] Q. And the Illinois Central.

A. Yes, sir.

[fol. 2128] Exam. Trezise: All right, Mr. Wood.

H. F. Cholet was sworn and testified as follows:

Direct examination.

By Mr. Wood:

Q. Will you please state your name, business address, and occupation, for the record?

A. My name is H. F. Cholet. I am employed as Assistant Traffic Commissoner of the Fifth and Ninth Districts Coal Traffic Bureau. My business address is 407 North Eighth Street, St. Louis, Missouri.

Q. What is the Fifth and Ninth Districts Coal Traffic Bureau?

A. The Fifth and Ninth Districts Coal Traffic Bureau is a voluntary organization of coal producers whose mines are situated in the Belleville and DuQuoin coal rate groups in Illinois.

Q. Is the boundary and geographical location of those groups shown on Witness Rozene's Exhibit No. 20?

A. Yes. The Belleville group is identified on that exhibit [fol. 2129] by the numeral (6) and the DuQuoin group by the numeral (7).

Q. What experience have you had in connection with transportation matters?

A. I have had 27 years experience in rate and transportation matters. I was employed by the Illinois Central Railroad in various capacities for a period of seven years, from 1916 to 1923. From 1923 to 1925 I was employed by the Missouri Pacific Railroad in the office of the Auditor of Freight Receipts as a rate revising clerk. From 1925 to 1928 I was employed as a rate clerk in the Traffic Department of the Missouri State Highway Commission. From 1928 to 1941 I was employed in the Transportation Department of the Missouri Public Service Commission as Assistant Rate Expert. Since that time I have been employed in transportation work, and for the latter part of the period as Assistant Traffic Commissioner of the Fifth and Ninth Districts Coal Traffic Bureau.

Q. Have you familiarized yourself with the issues involved in these proceedings?

A. Yes, I have.

Q. What is the position of the Fifth and Ninth Districts Coal Traffic Bureau and its members in these proceedings?

A. We are opposed to the increases proposed in the present rates from the Belleville and DuQuoin groups by the respondent carriers in the suspended tariffs, and also opposed to the issuance of any 13th section order, such as [fol. 2130] they request, which would require increases in the present intrastate rates on coal from mines in the Belleville and DuQuoin groups to the Northern Illinois points involved in these proceedings.

Q. Will you briefly state the principal reason for the position of the Fifth and Ninth Districts Coal Traffic Bureau and its members?

A. This is the second time that the railroads have attempted to increase the present rates on coal from the Belleville and DuQuoin, Illinois groups to Rockford, Freeport, and some of the other Northern Illinois points involved in these proceedings. In the prior case, Docket No. 23130, Intrastate Rates on Bituminous Coal between Points in Illinois, 182 ICC 537, the Interstate Commerce Commission dismissed the carriers' 13th section, petition because it found that the rates which they were voluntarily maintaining on coal from mines in Indiana to Northern Illinois points were on a substantially lower level than were the rates from the Illinois mines to those points, and the Commission stated that it could not or would not require any increases in the present intrastate rates from the Illinois mines to those points until the railroads had increased the existing rates from the Indiana mines to the Northern Illinois points involved to the level that they were seeking to establish from the Illinois mines.

Mr. Wilkinson: I suppose, Mr. Examiner, to keep the record straight here, I should object. The Commission's [fol. 2131] report will speak for itself, and I move that this be stricken.

Exam. Trezise: The Examiner knows what is in the report, and I guess there will not be any misunderstanding.

Mr. Wilkinson: All right.

The Witness: The railroads have not increased the rates from the Indiana mines, as the Commission indicated they should do before increasing Illinois rates. On the contrary, as stated both by Mr. W. H. Kuhls and Mr. H. A. Rozene,

they have reduced the rates from the mines in the Brazil-Clinton Indiana Group, served by the Milwaukee Railroad to Rockford, Freeport, and intermediate points, 17 cents per ton since the Commission decided Docket No. 23130, and they have reduced the rates from mines in the Linton-Sullivan Indiana group to those points, 12 cents per ton.

Following these reductions in the rates from the C., M. & St. P. & P. Railroad Indiana mines, the Illinois Central also reduced the rates from mines on its line in the Linton-Sullivan group to Rockford, Freeport, and other Northern Illinois points, to which I referred, 12 cents per ton below the basis in effect from those mines at the time of the decision of the Commission in Docket No. 23130.

We are, of course, unalterably opposed to the establishment of a higher level of rates from the mines in the Belleville and DuQuoin Illinois groups to the Northern Illinois points, to which increases are proposed in these proceedings, [fol. 2132] than from the Indiana mines, and it is our position that the Interstate Commerce Commission has no authority, under the provisions of Section 13 of the Interstate Commerce Act, to require the establishment of a higher level of rates intrastate from the mines of our members to these Northern Illinois points than it approves for equal distances from the mines of our competitors in Indiana.

By Mr. Wood:

Q. Have you prepared exhibits showing the average distances over the short tariff and shortest tariff routes, and the present and suspended rates from the Belleville, DuQuoin, and other groups in Illinois and Indiana to the representative suspended points in Northern Illinois, and the representative comparative points in the territory beyond?

A. No, because we have collaborated very closely with Mr. Rozene in the preparation of the exhibits and testimony which he presented in these proceedings showing the average short tariff and average shortest tariff route distances from all of the origin groups in Illinois, Indiana, and Western Kentucky to the representative suspended and comparative points, the present and suspended rates from those groups to these points. We did this in order to avoid duplication which would result from having several exhibits containing the same average short tariff or shortest tariff route mileages from these various groups. I desire to state that

we subscribe to and adopt these exhibits and his testimony in connection therewith, to the same extent as if I had pre- [fol. 2133] sented them myself.

Q. Have you prepared any exhibits for presentation in these proceedings?

A. Yes, I have prepared one exhibit, which has been marked No. 76, and which I would like to briefly discuss.

(Exhibit 76, Witness Cholet marked for identification.)

Page 2 following page 1, the title page, of this exhibit shows the rates which were in effect from the Belleville Illinois group and from the Brazil-Clinton, Linton-Sullivan, Princeton, and Boonville Indiana groups to Rockford and Freeport, Illinois, on August 20, 1930, which was at the time of the hearings before the Interstate Commerce Commission in Docket No. 23130. It also shows the present rates from those groups to these points, and the increased rates under suspension in these proceedings, as well as the increases or decreases which have been made in the rates from those groups to the two destinations named, since August 20, 1930, and the increases that are proposed by the rates under suspension.

It will be noted that while the present rate from the Belleville group to Freeport and Rockford reflects an increase of 10 cents per ton over the rate in effect on August 20, 1930, the present rate from mines served by the C. M. St. P. & P. Railroad in the Brazil-Clinton Indiana group reflects a reduction of 7 cents per ton, and the present rates from [fol. 2134] mines on that railroad, and from mines on the Illinois Central in the Linton-Sullivan Indiana group reflects a reduction of 2 cents per ton under the rates in effect from that group to Freeport and Rockford on August 20, 1930. The present rates from the mines served by the Milwaukee in the Brazil-Clinton group have therefore been changed a total of 17 cents per ton, and the rates from mines on the Milwaukee and Illinois Central in the Linton-Sullivan group have been changed 12 cents per ton since August 20, 1930, to the disadvantage of the mines in the Belleville and Du-Quoin groups and to the advantage of the mines in the two Indiana Groups named.

In other words, except for the Ex Parte No. 115 increase of 10 cents per ton which is reflected in the present rates from both the Illinois and Indiana mines to the Northern Illinois points to which the increased rates are proposed in

these proceedings, the present rates from all mines on the C. M. St. P. & P. in the Brazil-Clinton group to Freeport, Rockford and intermediate points are 17 cents per ton lower, and the present rates from all mines on the Milwaukee and Illinois Central in the Linton-Sullivan group to those points are 12 cents per ton, respectively, lower than the rates which were in effect from the mines in those groups at the time of the decision of the Interstate Commerce Commission in Docket 23130.

Page 3 of my Exhibit No. 76 presents a comparison of the average short tariff route mileages which are shown in the [fol. 2135] railroad's Exhibits Nos. 3 and 4 and in Rozene's Exhibit No. 23, and the present and suspended rates from the Belleville group, on the one hand, and the Linton-Sullivan, Princeton, and Boonville groups on the other, to 10 of the 12 representative suspended Northern Illinois points. This exhibit fully supports the showing which was made in witness Rozene's Exhibits and indicates that the present and suspended rates from the Belleville group are on a higher level than are the present or suspended rates from the Indiana groups referred to.

To Rockford and Freeport, for example, for average short tariff mileages of 332 and 334 miles, respectively, the railroads propose an increased rate of $2.15 per ton from the Belleville group, yet they apparently are willing to accept as reasonable and proper an increased rate of but $2.01 per ton from the Princeton group to DeKalb for 333 miles on the same identical distance. While they propose to increase the rate from the Belleville group to Rockford and Freeport from $2.00 to $2.15 per ton, for average short tariff route mileages of approximately 333 miles, they propose to increase the rate from the Princeton group to DeKalb but 5 cents per ton, or from $1.96 to $2.01 per ton and to accept that rate of $2.01 per ton for the same number of miles of transportation, that is, 333 miles, from the Princeton group to DeKalb. If the proposed increased rate of $2.01 from the Princeton group to DeKalb i a just and reasonable rate and compensatory for the service performed [fol. 2136] for 333 miles, it is obvious that the present rate from the Belleville group of $2.00 per ton for 333 miles of transportation service is also reasonable and proper and should not be increased.

The reasonableness and propriety of the present rate of $2.00 per ton from the Belleville group to Rockford and Freeport for an average distance of 333 miles is also clearly demonstrated by the other present and suspended rates shown on page 3 of my exhibit, from the Indiana groups to the other representative Northern Illinois points involved for substantially greater distances, which greater distances means more transportation service, that is, more miles of transportation service.

As illustrative, the present rate from the Princeton group to Sterling, Illinois, is but $2.01 per ton for an average short tariff route distance of 371.8 miles, and the railroads propose to increase this rate but 5 cents per ton or to $2.06 per ton. To DeKalb, the present rate from the Boonville group is $1.99 per ton for an average short tariff route distance of 380.5 miles. The railroads propose to increase this rate but 5 cents or to $2.04 per ton. It would seem apparent that, if as Witnesses Nelson and Hamilton stated on cross examination, the proposed increased rates from the Indiana mines to the Northern Illinois points involved constitute just and reasonable rates, that the proposed increased rates from the Belleville group to those [fol. 2137] points for the much shorter distances involved are clearly unjust and unreasonable.

There is one other illustration which I would like to direct attention to on page 3 of this exhibit, and that is in connection with the present and proposed increased rates of $2.04 and $2.09 per ton, respectively, from the Boonville group to Sterling, Illinois, for an average short tariff route distance of 431.1 miles. This average mileage is almost exactly 100 miles greater than the short tariff route distance from the Belleville group to Rockford and Freeport, two of the most important of the Northern Illinois points to which the rates are under suspension, yet, despite the 100 miles less average distance and less transportation service from the Belleville group to Rockford and Freeport than from the Boonville Indiana group to Sterling, the railroads propose a rate 6 cents per ton higher from the Belleville group to Rockford and Freeport than from the Boonville group to Sterling.

On page 4 of this exhibit I have shown the average short tariff route distance from the Belleville and Southern Illinois groups, from the Belleville and Princeton groups, and from the Belleville and Boonville groups to the 12 represen-

tative Northern Illinois suspended points, and the difference between the average distance from those groups to those points, as well as the difference between the suspended rates from those groups to those points. I have also shown the same information with respect to the average short [fol. 2138] tariff route mileages and the average suspended rates from the Belleville, Southern Illinois, Princeton, and Boonville groups and the difference between the average mileages and suspended rates from those groups to Rockford and Dixon, Illinois.

It will be noted that the difference in the average distance between the Belleville and Southern Illinois groups to all 12 points is 43 miles, and the difference between the suspended rates from those groups to those points, which is also the difference between the present rates, is but 10 cents per ton. Contrasted with this, the difference between the average distance from the Belleville group, on the one hand, and the Boonville group on the other, to those points is 72 miles, or almost twice as great as between the Belleville and Southern Illinois groups, yet the difference between the suspended rates from the Belleville group, on the one hand, and the Boonville group on the other, is but 10 cents per ton. To Rockford, Illinois, the difference in average distance between the Southern Illinois and Belleville groups is 37 miles, and the differential between the suspended and present rates from those groups is but 10 cents per ton. Contrasted with this, the difference between the average mileage from the Belleville group, on the one hand, and the Boonville group on the other, to Rockford, is 77 miles, or more than twice as great as the difference between the Belleville and Southern Illinois groups, yet the difference [fol. 2139] between the suspended rates is but 12 cents per ton. Under the proposal which has been advanced by Mr. Scott and the Southern Railway, this 77 miles more transportation service from the Boonville group to Rockford than from the Belleville group, would be entirely disregarded and the rates from the Boonville group would be placed on precisely the same basis as the rates from the Belleville group.

To Dixon, Illinois, the average difference in distance between the Belleville and Southern Illinois groups is 27 miles, and the differential between the present and suspended rates is 10 cents per ton. The average distance from the Boonville group to Dixon is 81 miles greater than from

the Belleville group, while the average distance from the Princeton group to that point is 67 miles greater than from the Belleville group. The suspended rates are 11 cents and 14 cents per ton, respectively, higher from the Princeton and Boonville groups than from the Belleville group to Dixon. These differentials are clearly out of line with the differential of 10 cents per ton between the rates from the Southern Illinois group, on the one hand, and the Belleville group on the other, to Dixon, for a difference in distance of but 27 miles. Under the proposal of Mr. Scott on behalf of the Indiana mines, and of the Southern Railway, the difference in distance of 67 miles, Princeton over Belleville, and 81 miles, Boonville over Belleville, to Dixon, which require that many more miles of transportation [fol. 2140] service, would be entirely disregarded and the rates from the Boonville group would be placed on the same basis as from the Belleville group, while the rate from the Princeton group would be made 3 cents per ton lower than from the Belleville group.

The suspended going rate from the Linton-Sullivan group to Dixon is 1 cent per ton lower than from the Belleville group, although the average distance from the Belleville group is 18 miles less. As I understand the proposal advanced by Mr. Scott, on behalf of the Indiana mines, it would, if adopted, result in reducing the present low rates from the Indiana mines to Dixon and in placing the rate to that point 10 cents per ton under the suspended rate from the Belleville group.

We subscribe to the principle advocated by Mr. W. H. Kuhls, one of the witnesses on behalf of the petitioning and respondent railroads, that the rates from a group in Indiana to the Northern Illinois points involved, such as the Brazil-Clinton group, should be the same as from a group in Illinois located an equi-distance from any destination. But we insist that the Commission should not stop, as it did in I&S Docket No. 4368, when it comes to applying the same identical principle to the rates from other equi-distance groups in Indiana, on the one hand, and in Illinois on the other, such as the Belleville Illinois group, on the one hand, and the Princeton Indiana group on the other, or the Southern Illinois group, on the one hand, and the Princeton and Boonville groups, on the other, but that it [fol. 2141] should apply that principle equally and fairly with respect to the rates from all of the groups in the mid-

western field in order to eliminate preference and prejudice and relatively unreasonable rates from the Belleville, DuQuoin, Southern Illinois, and other Illinois groups.

In other words, we insist that if it is fair and proper, as Mr. Kuhls on behalf of the railroads, and Mr. Scott on behalf of the Indiana producers, have contended, to make the rates to these Northern Illinois points the same from the Brazil-Clinton Group as from the Springfield group where the average distances from those groups to those points are substantially the same, then it is equally fair and imperative that the rates from the Princeton and Boonville Indiana groups should be the same or higher than from the Belleville group, dependent upon whether the distances from the Indiana groups are the same as from the Belleville group or higher.

I also wish to call attention to the fact that the average difference between the short tariff route distances from the Southern Illinois group, on the one hand, and the Springfield Illinois group on the other, to the 12 representative suspended Northern Illinois points is 128 miles, and that the difference between the present and suspended rates from those groups is 30 cents per ton. If this is a fair and reasonable differential, and no claim has been made by any party to these proceedings that it is not a fair, reasonable, [fol. 2142] and proper differential for this difference in distance, then it is our position that the differential between the Boonville group, on the one hand, and the Brazil-Clinton group on the other, to such destinations can not reasonably or properly be less than 30 cents per ton for the average differences in the short tariff route distance between those groups of 133 miles.

Q. Have the mines in the Belleville and DuQuoin groups been able to ship a large quantity of coal to the representative suspended points under the present rate adjustment?

A. No. According to the railroads' own Exhibit No. 4 they have not, and the tonnage during the first six months of 1942 represented a very substantial loss as compared with the tonnage shipped during the first six months of 1941.

Mr. Wilkinson: Can I ask you right now what page that is shown on, on your exhibit 4? Can you tell us where you show those figures?

A. Yes, I am coming to that.

Mr. Zoll: I believe Section 8 of that exhibit shows the tonnages.

The Witness: It is Exhibit 4, Section 8.

Mr. Wilkinson: Thank you.

The Witness: Pages 2 to 5, inclusive. For example, to DeKalb, the tonnage from the DuQuoin group declined from 900 tons during the first six months of 1941 to but 50 tons during the first six months of 1942. To Rochelle, the [fol. 2143] tonnage from the DuQuoin group declined from 2300 tons during the first six months of 1941 to 2000 tons during the first six months of 1942. The tonnage from the Belleville group to DeKalb declined during the first six months of 1941 from 750 tons to nothing during the first six months of 1942. To Geneva, the tonnage from the Belleville group declined from 1550 tons during the first six months of 1941 to but 300 tons during the first six months of 1942. To Sterling, the tonnage from the Belleville group declined from 250 tons in the first six months of 1941 to but 50 tons during the first six months of 1942.

Mr. Zoll: Mr. Cholet, these figures are in Exhibit 4 that you are reading?

The Witness: Yes.

Mr. Zoll: If they are right in the exhibit, I don't want to object, but I don't see the purpose of reading them.

The Witness: I am calling attention to these figures, Mr. Zoll. To Rockford the tonnage from the Belleville group declined from 22,931 tons in 1941 to but 8,465 tons during the first six months of 1942. This was a loss of 14,466 tons or 63 per cent. To Rochelle, the Belleville group shipped 150 tons during the first six months of 1941, and during the first six months of 1942 this group shipped nothing. The tonnage from Belleville group to DeKalb, Dixon, Geneva, Rochelle, Rockford, and Sterling, declined from 26,305 tons in the first six months of 1941, to 9,452 tons in the first six months [fol. 2144] of 1942, or a loss of 16,853 tons, or 64 per cent.

I also wish to point out that the Belleville and DuQuoin groups have been able to ship but a very small quantity of coal to the representative comparative points. To Ft. Atkinson, Janesville, and Lake Mills, Wisconsin, for example, no coal moved from the DuQuoin Illinois group during either the first six months of 1941 or 194_, nor did the Belleville group ship any coal to Ft. Atkinson or Lake Mills during the first six months of either 1941 or 1942. The tonnage from that group to Janesville decreased from the insignifi-

cant total of 100 tons during the first six months of 1941 to but 50 tons, equivalent to one car, during the first six months of 1942.

As the railroads' exhibit shows, as I have pointed out, neither the Belleville nor the DuQuoin group shipped any appreciable tonnage to either the representative suspended or representative comparative points, and as the tonnage from those groups to those points, where any has moved, has substantially declined or disappeared entirely during the first six months of 1942 as compared with the first six months of 1941, it would seem apparent that no legitimate claim can be made that the present intrastate rates from those groups to the Northern Illinois points involved result in any undue preference to the mines in those groups or undue prejudice to interstate commerce or in any revenue discrimination against interstate commerce, in violation of Section 13 of the Act.

[fols. 2145-2161] (Exhibit 76, Witness Cholet, received in evidence.)

Exam. Trezise: Do you have another exhibit now?

The Witness: No, just one exhibit.

Exam. Trezise: Then what do you mean by saying that it showed the distances over the shortest tariff routes? I understand you use only the short tariff routes.

The Witness: That is right.

Exam. Trezise: Well, your answer on page 2 of this typewritten statement, in response to the question asked whether you showed it over the short tariff route and shortest tariff route, and you said you did. You didn't mean that?

The Witness: I didn't mean I made separate computations. These figures are taken from other exhibits.

Exam. Trezise: Well, the shortest tariff routes were not taken from other exhibits?

The Witness: The short tariff routes.

Exam. Trezise: The short tariff routes were, but you haven't got any shortest tariff routes?

The Witness: I have got the short tariff routes in this exhibit.

Exam. Trezise: And when you said you had the shortest tariff routes, you didn't mean that?

The Witness: No.

Exam. Trezise: Thank you.

[fol. 2162] Exam. Trezise: Do we have further questions of this witness?

Mr. Wilkinson: I have just a few questions.

Exam. Trezise: Mr. Wilkinson:

By Mr. Wilkinson:

Q. You have made comparisons of Belleville and Boonville in your exhibits. Do you know whether or not Boonville ships any substantial quantity of coal into this territory?

A. Of my own knowledge, I do not know.

[fol. 2163] Q. You don't know whether the rates from Boonville have any effect upon the ability of any of the members of the association you represent in selling coal in this territory or not, do you?

A. No, I don't.

Q. You merely took Boonville because of the mileage shown and the rates, rather than because it was a factor in the competitive situation?

A. Well, I have shown Boonville because the distances are somewhat greater than from Belleville, and that was my purpose in showing it on this exhibt.

Q. But you didn't mean to indicate or have the Commission believe that the fact that the distance from Boonville to Rockford was greater than from Belleville to Rockford and that the rate was only 10 cents more, that that particularly injured Belleville? Did you mean to indicate that?

A. Well, I mean to indicate that as measured by the amount of transportation service that Boonville was relatively lower than Belleville.

Q. Well now, looking at Geneva, Illinois, where no coal moved from Boonville to Geneva during the 18 months, the year 1941 and the first six months of 1942, was there any greater transportation service from Boonville to Geneva than there was from Belleville where they did haul a considerable quantity of coal?

A. Well, course, if Boonville moved no coal, then there [fol. 2164] was no transportation service performed.

Q. Well now, do you think in the first six months of 1942 that the amount of transportation service from Boonville as compared to that from Belleville to Rockford was greater or less, no coal moving from Boonville to Rockford in that period?

A. Well, according to the railroads' exhibit, page 5, section 8, Exhibit No. 4, there wasn't any coal moving from Boonville to Rockford during the first six months of 1942.

Q. And during the entire year of 1941 there was 615 tons moved from Boonville to Rockford?

A. That is right.

Q. Would you say that that involved substantially more transportation service than the 23,000 tons that moved from Belleville in the first six months of 1941?

A. Well, I don't know what the weighted average is, Mr. Wilkinson.

Q. Now, referring to your exhibit, Mr. Cholet, where you compare the rates of the Milwaukee Railroad from the Linton-Sullivan Group to Freeport, that is on page 3, with the rates from the Belleville group to Rockford and Freeport, do you believe it is a proper comparison to compare the Milwaukee rates with the rates from Belleville and using the average distance from the Linton-Sullivan Field and just the Milwaukee rates?

A. Well, as I understand it, Mr. Wilkinson, the witness for the Milwaukee Railroad stated something here about [fol. 2165] putting all the rates in the one group on the same basis.

Q. Yes.

A. Well, if you put those rates on the same basis from all mines in the Linton-Sullivan Group, then you are going to get $2.05 for an average short tariff route distance of 331 miles.

Q. Yes, if you did that.

A. That is right.

Q. But at the present time and under the proposal, there is no proposal before this Commission or either commission for doing that, is that right? That is a request of the shippers.

A. By the railroad.

Q. Not a request by the railroad.

A. Well, as I understand, you propose to put all rates in the group on the same basis.

Q. Or, we want that, we would like to see that done, but the railroads are not proposing to do that at this time, are they?

A. They are not proposing to do so in the suspended tariffs.

Q. Don't you think it would be more fair if when you are comparing an individual rate of one railroad if you showed the distance via that railroad?

A. I think this comparison is all right, Mr. Wilkinson.

Q. You think that is a fair comparison?

A. Yes.

Mr. Wilkinson: That is all.

Exam. Trezise: Any further questions?

[fol. 2166] By Mr. Hunter:

Q. Would you tell us why you think that is a fair comparison, Mr. Cholet? What is the distance via the line of the Milwaukee alone?

A. I was looking at the Illinois Central and the Milwaukee as 316 miles.

Q. Yes, but what is it via the Milwaukee alone?

A. Well, I don't have the figures before me.

Mr. Wilkinson: You just gave it as 237 from Brazil-Clinton to Rockford, I believe.

The Witness: No, I didn't say anything about Brazil-Clinton.

Mr. Wilkinson: Via the Milwaukee?

The Witness: I didn't say anything about Brazil-Clinton.

Mr. Wilkinson: I thought you gave that in answer to Mr. Morgan's question.

The Witness: He was talking about Brazil-Clinton, yes.

By Mr. Cardy:

Q. Just one question, Mr. Cholet. Do you know whether there has been any movement from the Boonville district to any of these points that you are complaining of?

A. Of my own knowledge, I don't know.

Q. So in so far as the rate is concerned, you don't know whether that rate, which is a published rate, whether it does you any real harm or not, or damage?

A. Well, of course, I don't know anything about the commercial situation.

[fol. 2167] Q. You don't know anything about the movement, all right. Now, as I understand it, all of your distances are taken from carriers' exhibits 3 or 4, is that right?

A. That is right.

Q. And that exhibit shows the detail—well, that is all.

Exam. Trezise: Mr. Cholet, if there is no movement of coal from the Boonville group to this destination territory, you wouldn't have any interest in what the rate is from the Boonville group, other than as it now stands, isn't that right?

The Witness: Well, we are, of course, interested in all these rates, Mr. Examiner.

Exam. Trezise: Well, your thought is that either there is some movement, there is a prospect of some movement, there must be something that compelled you to make the comparison with the Boonville group?

The Witness: Well, the carriers are proposing certain suspended rates which they say are just and reasonable rates, and I am making my Illinois comparison with those rates that they are proposing and which they say are just and reasonable rates.

By Mr. Cardy:

Q. Now, Mr. Cholet, isn't the only reason you picked out Boonville because in looking over carriers' exhibits 3 or 4 you found that their distance and rate was lower than the rates from Belleville to the same destination? Isn't that the only reason why you made that comparison? You [fol. 2168] said you don't know anything about the movement, and isn't that the only reason?

Mr. Stadell: I object to the question. The witness' testimony was that he picked not only Boonville, but Princeton and Linton-Sullivan?

Mr. Cardy: Well, I am talking about Boonville now.

Mr. Stadell: He has explained Boonville.

Mr. Cardy: Let him answer the question.

Exam. Trezise: Let him answer. He must have had some interest in these Indiana points of some kind, removed or otherwise, or he wouldn't have selected them.

Mr. Cardy: I want to know if he had any other interests outside of merely looking at the tariff, if he had any other influence outside of an examination of these exhibits.

The Witness: Well, of course, our organization represents shippers in the Belleville and DuQuoin groups, and we would like to see our rates on a proper relationship.

Mr. Cardy: I agree with you on that, but that isn't the answer.

Mr. Stadell: Now, let the witness answer.

Mr. Cardy: Well, he hasn't answered it.

Mr. Stadell: I object to the interruption and I insist the witness be allowed to finish his answer.

Exam. Trezise: Did you finish your answer, Mr. Cholet?

The Witness: Yes, I finished my answer.

[fol. 2169] Mr. Cardy: Well, you haven't answered it yet.

The Witness: Well, what is your question then?

By Mr. Cardy:

Q. I asked whether or not you had any additional information outside of an examination of the carriers' exhibits which prompted you to compare Boonville or take Boonville as a comparison, I mean as to the movement of coal to these destinations, or any other additional information outside of the mere fact that the distance from Boonville is greater than the distance from Belleville? Did you have any other additional information that prompted you to make this comparison?

A. Nothing other than what is shown in the carriers' exhibits.

Mr. Cardy: That is all.

By Mr. Vesey:

Q. You presumed, did you not, Mr. Cholet, that coal moved from all origin points into the suspended territory?

A. Why, I assumed that, yes.

Q. And you have no reason to date to change that assumption, have you?

A. No.

By Mr. Stadell:

Q. That assumption was based, was it not, Mr. Cholet, in considerable part upon the vigorous efforts of the Indiana interests to continue these low rates in effect from the Boonville group to the suspended territory?

Mr. Cardy: I object to that. You are assuming something. Just ask him what additional information he had. [fol. 2170] I object to your question.

Exam Trezise: Well, read this last oratory here.

(Question read.)

The Witness: Yes.

Mr. Stadell: In this proceeding.

Mr. Wilkinson: Just a minute. The Examiner hasn't ruled on the objection yet.

Exam. Trezise: There was an objection to the question, but I think I will let the answer stand now.

Mr. Wilkinson: Well, I don't like to have my rates characterized as low in a question and have the witness base it on a wrong premise, Mr. Examiner.

Mr. Morgan: You have to admit that is a fact.

Mr. Wilkinson: No, I don't.

Exam. Trezise: May the Examiner just ask a little question. I hope it is innocuous. You selected the Princeton group too, didn't you, when you made the comparison?

A. Yes, sir.

By Examiner Trezise:

Q. You selected the Linton-Sullivan Group, didn't you?

A. Yes, sir.

Q. You selected the Brazil-Clinton Group too, didn't you?

A. Yes, sir.

Q. Those are the principal groups in Indiana. You didn't select Boonville alone and hold it up as a horrible example [fols. 2171-2173] or something *or something*. You selected all of them for what they may show, is that true or not?

A. That is true.

. . . . . .

[fol. 2174] Morrison Hotel, Chicago, Illinois,
October 2, 1943.

Hearing resumed pursuant to adjournment at 9:30 o'clock a. m.

Before R. N. Trezise, Examiner; W. C. Kaylor, Illinois Commerce Commission.

APPEARANCES:

As heretofore noted.

Exam. Trezise: All right, gentlemen, when you are ready we will proceed.

Mr. Vesey: Mr. Christiansen.

Exam. Trezise: Be sworn, Mr. Christiansen.

A. J. CHRISTIANSEN was sworn and testified as follows:

Direct examination.

By Mr. Vesey:

Q. Please state your name, address and occupation.

A. A. J. Christiansen, 310 South Michigan Avenue, Chicago, Illinois. I am Assistant Secretary and Manager of Middle States Fuels, Incorporated, and Secretary of the Northern Illinois Coal Trade Association.

Mr. Vesey: If the Examiner please, I intended to say this before I asked the first question. The testimony [fol. 2175] which Mr. Christiansen is giving in this proceeding here will be identical with the testimony which he will give in Docket 28888. In view of that fact and to save time, to avoid repetition, I am going to ask that the reporter be directed to so keep her notes that when we reach Docket 28888, this testimony may be shown again as the testimony in Docket 28888. It is just in the interests of time only.

Mr. Zoll: Mr. Examiner, that would amount to an incorporation of this in 28888, and I would like to ask you to reserve passing on that until Mr. Biaett gets here.

Exam. Trezise: Yes. That will be in the other proceeding, so when you come to that, we will have to pass upon it at that time.

Mr. Vesey: I just wanted to make provisions for it here so that when the time comes in 28888, Mr. Examiner, that I put Mr. Christiansen on the stand and then I ask at that time that his direct and cross-examination——

Exam. Trezise: It may be that all the parties would agree.

Mr. Vesey: With the right to the other parties to elaborate on their cross-examination; just for the purposes of saving time, that is all.

Mr. Stadell: Do you understand by that that this will constitute his entire evidence in 28888?

Mr. Vesey: That is right.

Mr. Stadell: Direct evidence?

[fol. 2176] Mr. Vesey: That is right. I tried to prepare it so as to keep within the issues in both cases.

Mr. Cardy: Mr. Vesey, will you make a statement to let the record show that Mr. Christiansen is testifying on behalf of the Medusa Portland Cement Company, one of the complainants in the Dixon case, and also the Northern Illinois Coal Corporation? Will you make that statement or will I have to ask Mr. Christiansen that question?

Mr. Vesey: I think you had better ask him that question.

Mr. Cardy: All right, at the proper time I will.

By Mr. Vesey:

Q. How long have you been connected with Middle States Fuels, Incorporated, and the Northern Illinois Coal Trade Association?

A. I have been connected with Middle States Fuels, Incorporated, since 1939, the year the corporation began operation, and I have been Secretary of the Northern Illinois Coal Trade Association since 1937.

Q. What is Middle States Fuels, Incorporated?

A. Middle States Fuels, Incorporated, is a Delaware corporation organized for the purpose of marketing the bituminous coals produced in the Fulton-Peoria producing field of Illinois. It was organized pursuant to the authority conferred under Section 12 of the Bituminous Coal Act of 1937 and was approved by the Bituminous Coal Division. The coal producing companies whose coals were sold through Middle States Fuels, Incorporated, are set forth in [fol. 2177] our petition of intervention in Illinois Commerce Commission Docket No. 30935, which proceeding has been consolidated with Dockets 28881 and I. & S. 5139.

On August 24, 1943, following the expiration of the Bituminous Coal Act of 1937, as amended, Middle States Fuels, Inc., cancelled its contracts with its producer-members and entered into new contracts with them providing for the furnishing of certain statistical reports, marketing analyses and freight rate studies and reports. Hence, in so far as this proceeding is concerned, it serves as a means of expressing the views of its stockholder members with respect to the establishment of just and reasonable rates by rail carriers for the transportation of their coals.

Q. What is the Northern Illinois Coal Trade Association?

A. It is a voluntary, unincorporated association organized for the purpose of protecting the interests of its members and, in so far as this proceeding is concerned, it serves as a means of consolidating and expressing the views of its members with respect to the establishment of just and reasonable rates by rail carriers for the transportation of its members' coals.

Mr. Cardy: Now, Mr. Vesey, at this time can I just ask Mr. Christiansen one question?

Mr. Vesey: Yes, sir.

By Mr. Cardy:

Q. Mr. Christiansen, in addition to the companies or associations that you represent in this proceeding, do you [fol. 2178] represent any other companies so far as your testimony in this proceeding is concerned?

A. I appear on behalf of the Medusa Portland Cement Company at Dixon, Illinois, complainants in Docket, Illinois Commerce Commission Docket No. 30——

Q. 935.

A. 30935; and I also appear on behalf of the Northern Illinois Coal Corporation, which is a member of the Northern Illinois Coal Trade Association.

Q. And that company operates a mine at what point?

A. At Wilmington, Illinois.

Q. In the Northern Illinois Group?

A. Yes, sir.

Mr. Cardy: Thank you.

By Mr. Zoll:

Q. Is Illinois Commerce Commission Docket 30935 the complaint case, or is that the case involving the suspension of the state rates? I may be wrong. I thought you had the wrong number.

A. No, it is 31295, is the docket number.

By Exam. Trezise:

Q. What is 31295?

A. That is the Dixon Chamber of Commerce complaint.

Exam. Trezise: All right, let's proceed.

By Mr. Vesey:

Q. Mr. Christiansen, are you familiar with the freight rates which apply on bituminous coal moving from the several origin groups, that is, Indiana, Illinois and Western [fol. 2179] Kentucky—to the affected and compared territority involved in these proceedings?

A. I am.

Q. Will you please state for the record, Mr. Christiansen, your experience in the transportation field in so far as freight rates are concerned?

A. In November, 1915, I was employed by the Santa Fe Railroad in its operating department, which position I held until December, 1916. I resigned from the Santa Fe in December, 1916, and began working for the Rock Island Railroad in its operating department on the Illinois Division. During a part of the period which I was employed by the Rock Island, I acted as a local freight agent and gave considerable study to the matter of freight rates, including freight rates on bituminous coal in the Illinois Freight Association territory. In May, 1919, I resigned from the Rock Island Railroad to accept a position as Assistant Traffic Commissioner in the Traffic Bureau of the Davenport Chamber of Commerce at Davenport, Iowa. I remained in that position until January 1, 1928, at which time I resigned to become Traffic Manager of the Traffic Bureau of the Moline Association of Commerce at Moline, Illinois. On November 1, 1937, I resigned from the Moline Association of Commerce to accept the position of Secretary and Traffic Manager of the Northern Illinois Coal Trade Association at Chicago, Illinois, which position I still hold.

[fol. 2180] In 1938, Middle States Fuels, Incorporated, was organized as a sales company for the marketing of bituminous coal produced in the Fulton-Peoria field in Illinois and this organization began operation in 1939 and I was appointed Assistant Secretary and Manager, which position I still hold.

From 1919 to date I have been actively engaged in handling traffic and transportation matters before the Interstate Commerce Commission, the Illinois Commerce Commission, Board of Railroad Commissioners of the State of Iowa, concerning many commodities and with particular reference to bituminous coal in this Illinois, Indiana and

Western Kentucky coal producing territory, both as to producers and as to consumers. I have appeared as a witness in many proceedings and have also handled the preparation and presentation of the evidence in many cases involving transportation problems with particular reference to freight rates and their adjustments on bituminous coal before the Interstate Commerce Commission and other regulatory bodies.

Q. What experience have you had in marketing bituminous coal?

A. Since Middle States Fuels, Incorporated, began operation in 1939 and up to August 23, 1943, I have supervised the sale and distribution of all the coals produced in the Fulton-Peoria district by those companies listed in the intervening petition filed by us in Docket 31295. Every contract covering the sale of coal was personally approved by me and every invoice billing the customer for the purchase of coal of these companies passed through my office. [fol. 2181] Q. Are you familiar with the various grades and sizes of bituminous coal produced in Illinois, Indiana, Western Kentucky and Iowa?

A. Yes.

Q. Do you know the markets in which those coals are normally sold and delivered?

A. Yes.

Q. Are you familiar with the several transportation methods and systems usually employed in the distribution of these coals?

A. Yes.

Q. Have you examined and studied the tariffs issued by the rail carriers covering the movement of bituminous coal from the various origin groups in Illinois, Indiana, Western Kentucky and Iowa to the markets in which they are normally sold and distributed?

A. Yes. I have kept myself advised on that subject for the past 25 years.

Q. Are you familiar with the various freight rate changes and adjustments that have been made in bituminous coal freight rates on Indiana, Illinois, Western Kentucky and Iowa coals during the past 25 years?

A. Yes.

Q. Have you read and are you familiar with the various opinions and orders of the Interstate Commerce Com- [fol. 2182] mission and the Illinois Commerce Commission

affecting freight rates on bituminous coal from origins in Illinois, Indiana, Western Kentucky and Iowa?

A. Yes.

Q. Will you please tell us what is the Fulton-Peoria district and by that I mean what producing areas or fields are embraced within it?

A. The Fulton-Peoria producing district is composed of the mines located in Fulton, Peoria, Knox, Henry and Tazewell Counties in Illinois. These counties form a unified coal-producing district or area in the northwestern part of the state of Illinois. In other words, it is a coal mining district similar to such districts or groupings as Southern Illinois, Springfield, Belleville, Northern Illinois, Brazil-Clinton, Linton-Sullivan, Princeton-Ayrshire, Boonville or Western Kentucky.

Q. With respect to the movement of coal from the Fulton-Peoria district to the destinations in the affected territory involved in this proceeding, will you tell us whether or not those coals move on the same rates in the several tariffs issued by the carriers?

A. They do not.

Q. Confining your attention to the territory in Northern Illinois, Eastern Iowa and Southern Wisonsin, will you please explain the differences that exist in the rates from the several mines or groups of mines in the Fulton-Peoria [fol. 2183] District and in general terms the reasons therefor?

A. Although the Fulton-Peoria district is a unified coal producing district in so far as coal production is concerned, it embraces several districts which are treated separately in so far as the construction of freight rates is concerned to certain territories, in particular short-haul territories. The Fulton-Peoria district is composed of what is sometimes called the Alpha-Atkinson district in Henry County, the Fulton County district in Fulton and Peoria Counties, the Peoria district in Peoria and Tazewell Counties, and the Victoria district in Knox County. To shorthaul points, such as Davenport, Iowa, Moline and Rock Island, Illinois, Atkinson and Alpha have lower rates than Fulton County. To some destinations in northern Illinois, Peoria has lower rates than does Fulton County, and from Victoria, Illinois, to certain destinations the CB&Q Railroad has seen fit to voluntarily establish rates lower than those in effect from the Fulton County district to destinations on their own

line. There are instances where the rates from Fulton County to shorthaul destinations are lower than the rates from Peoria to the same destinations and there are even rates within Fulton County where the mines in Fulton County have rates from each mine that are different from other mines in the same county.

This is also true of the Springfield district, the Southern Illinois district and the Belleville district to their shorthaul territory. In other words, each producing district has varying rates to points close to that district.

[fol. 2184] This can best be illustrated by taking the Springfield or the Central Illinois district, which is a very large producing district, extending from Lincoln on the north, which is near Peoria, to Edwardsville on the south, which is near East St. Louis, Illinois, and examining its rate to a destination which would be considered a shorthaul in so far as the Springfield district is concerned, for example, Bloomington, Illinois. The present rate from Decatur to Bloomington is 92 cents, from Springfield to Bloomington, 99 cents; from Taylorville to Bloomington, $1.25; from Mt. Olive to Bloomington, $1.52; or, taking another point such as Decatur, Illinois, which is also shorthaul in so far as the Springfield producing district is concerned, at this destination the rates from the Springfield district vary from 67 cents to as high as $1.20 per ton. However, to destinations beyond the short-haul territory the rates from these origin points become uniform.

Q. Confining your attention now to the affected territory where there are changes proposed in the rates from the Fulton-Peoria district to certain northern Illinois destinations, will you please explain the differences which exist in the rates from the several mines or groups of mines in the Fulton-Peoria district and the reasons therefor?

A. To the affected territory in the northern part of the state of Illinois, there is some variation in the rates on bituminous coals from the Fulton-Peoria district as I have [fol. 2185] outlined that district.

From Atkinson, Illinois, the most northerly point in the Fulton-Peoria district, the rates to every destination to which changes are proposed by the carriers in the Northern Illinois territory are the same, or higher than the rates from Fulton County. From Alpha, Illinois, which is a local point on the C. B. & Q. Railroad in Henry County, and is the closest point of origin on that railroad to the destinations

involved in this proceeding, the rates are the same as from Fulton County to every destination where a change is proposed in the rates from Fulton County except to the destination of Amboy, Illinois. In other words, to that one destination no change is proposed in this proceeding from Alpha, although there is a change proposed from Fulton County. The rate from Alpha to Amboy of $1.05 for an 88-mile haul was prescribed by the Illinois Commerce Commission in 1925 in Docket 13572 as a reasonable maximum rate.

From Victoria, Illinois, located on the Galesburg and Great Eastern Railroad and connecting with the C. B. & Q. Railroad at Wataga, Illinois, the rates are 5 cents lower than the rates from Fulton County to certain destinations on the C. B. & Q. Railroad. At the time the mine was opened in 1936 the C. B. & Q. Railroad saw fit to voluntarily establish lower rates from Victoria than those in effect from the Fulton County district to some destinations on its own line. [fol. 2186] The rates from Victoria to all joint-line points are the same as the rates from Fulton County.

From Peoria, Illinois, there are lower rates to a few destinations than the rates from Fulton County, and, to other destinations, particularly destinations on the C. B. & Q. Railroad, the rates from Peoria, Illinois, are higher than are the rates from Fulton County. However, to most destinations in the affected territory, the rates from Peoria are the same as the rates from Fulton County.

Q. Confining your attention to the destinations in the compared territory in southern Wisconsin, are the rates from Alpha, Atkinson, Victoria, Peoria and Fulton County the same?

A. Considering that Beloit, Wisconsin, is improperly described as a point in the compared territory, whereas it is actually a point in the affected territory, the rates to Wisconsin destinations from the points of origin which we call the Fulton-Peoria district, Alpha, Atkinson, Victoria, Fulton County, are the same to all destinations. To Beloit, Wisconsin, if it is to be called a point in the compared territory, the rates from all the origin points in the so-called Fulton-Peoria district are the same except from Atkinson. From Atkinson, the rate is 14 cents a ton higher than the rate from Fulton County, although it is the closest point of origin to Beloit, Wisconsin. The mileage from Atkinson to Beloit is 133.9 miles, and the rate $1.94. The rate from

[fol. 2187] the Fulton County district is $1.80, with a mileage via short tariff route of 169.1 miles. Thus, as an illustration, Atkinson, when compared with Fulton County on coal to Beloit, Wisconsin, has a 35.2 miles shorter haul, but a 14 cent per ton higher rate. The incongruity of the Fulton-Peoria rate at Beloit and in the affected territory will be shown in full detail in exhibit form.

Q. To destinations covered by the Interstate Commerce Commission and Illinois Commerce Commission suspension orders, should or should not the Fulton-Peoria district, as you have described it, in your opinion be treated as a single origin group in so far as these proceedings are concerned?

A. Where the present rates from the various points of origin in the Fulton-Peoria group are the same or higher than the rates from Fulton County to a given destination, such points of origin should be treated as a single origin group, and all should be included in ascertaining the mileages to be used in measuring the level of rates or in prescribing a new level of rates.

Q. In the preparation of your mileage studies and other computations, have you treated the mines in the Fulton-Peoria group, as you have described it, as a single origin group?

A. Yes. In the preparation of our mileage studies we have made calculations as to average mileages via two methods. First, we have treated all of the origin points in the Fulton-Peoria group as I have described it and have [fol. 2188] found the average mileages to each destination using all of these origin points. We have made another calculation using the so-called Fulton-Peoria going rate as the basis for ascertaining what origin points to use. In other words, if an origin point had the same rate as Fulton County, that origin point was included in ascertaining average mileages. We figured the mileages using the so-called short tariff routes, which includes each origin point as often as it appears on different origin lines, and also via the shortest tariff routes using each origin point only once.

Q. Directing your attention for the moment to the Northern Illinois producing district, are the rates to the destinations in the affected territory the same from all of the origin points in the Northern Illinois group?

A. They are not.

Q. Will you amplify your answer, please?

A. The Northern Illinois coal producing district is the closest origin group to the destinations in the affected territory and to most of these destinations there is a variation in rates from the different origin points. In fact, I doubt if there is a single destination in the affected territory where the rates are the same from all points of origin in the Northern Illinois group. Hence the rates from the Northern Illinois group to the destinations in the affected territory are actually short-haul rates.

Q. In connection with the variations in rates to the desti-
[fol. 2189] nations in the affected territory from the different origin points in the Fulton-Peoria group, isn't it also a fact that there are variations in the rates from certain of the origin groups in Indiana to these same destinations?

A. Yes, for example, from the Brazil-Clinton group in Indiana and from the Linton-Sullivan group in Indiana, the rates from the origin points on the Milwaukee Railroad are 17 cents a ton lower than the rates from the origin points of other railroads to the destinations in the affected territory. Both the Brazil-Clinton and the Linton-Sullivan groups in Indiana have at least two different rates to many of the destinations in the affected territory.

Q. Have you prepared certain exhibits for introduction in these proceedings?

A. Yes, sir.

Q. Were these exhibits prepared under your supervision and direction?

A. They were.

Q. Now, Mr. Christiansen, will you please take your exhibits and identify them so that we may number them in accordance with the numbers as shown on the preceding exhibits introduced in evidence in this proceeding.

A. What is our next number?

Exam. Trezise: 77.

Mr. Vesey: I think we might just as well identify these
[fol. 2190] off the record as well as on the record.

Exam. Trezise: Yes, I thing that would be better.

(Discussion outside the record.)

(Exhibits 77 to 91, both inclusive, Witness Christiansen, marked for identification.)

Exam. Trezise: All right, proceed.

By Mr. Vesey:

Q. Are these exhibits, Mr. Christiansen, true and correct, to the best of your knowledge and belief?

A. They are.

Q. And do they truly show that which the purport to show?

A. They do.

Mr. Vesey: I offer the exhibits in evidence; Exhibits Nos. 77 to 91, inclusive.

Mr. Zoll: As I understand, these are received in evidence as they are taken up and discussed on the record.

Exam. Trezise: When they are identified and described. I have stated a couple of times that in a case such as this it is rather agreed that when they were identified and described, that they would be shown as received in evidence, unless they were later rejected for some reason.

Mr. Vesey: They are in evidence unless a motion to strike is subsequently made and sustained.

Exam. Trezise: Yes.

By Mr. Vesey:

Q. Referring to your Exhibit No. 77, will you please explain this exhibit?

[fol. 2191] A. Exhibit No. 77, identified by code reference mark N-260 in the lower lefthand corner, and consisting of 10 pages, shows the mileages from Northern Illinois origin points to certain destinations in the Northern Illinois territory to which rates are suspended in these proceedings. It also shows the present rate on bituminous coal from each of the origin points to each of the destinations via each route. At the time all of these exhibits were prepared certain increases authorized in Ex Parte 148 were in effect, and the exhibits indicate that the rates shown are, in all instances, without Ex Parte 148 increases. However, since May 15, 1943, the increases have been eliminated and, therefore, the rates shown in the exhibit are the present rates which are now in effect, unless they are indicated otherwise, as are, for example, the suspended rates.

On page 1 of this exhibit is a recapitulation of the average mileages via short tariff routes and shortest tariff routes to each of the destinations shown in the exhibit, and there are also shown under the rate column the various rates which are in effect from the Northern Illinois origin points

to each of the destinations. On pages 2 to 7, inclusive, are shown the specific rates and the specific mileages from each origin point to each destination via short tariff route, and a calculation is made at the bottom of each page for each of the destinations showing the average mileages via [fol. 2192] the short tariff routes and via shortest tariff routes.

I might explain at this time that the term "short tariff route" indicates that the origin point was used in securing the average mileages as often as it appeared on different railroads which serve that particular origin point via the shortest tariff route from that origin point via that carrier. The term "shortest tariff route" indicates that the origin point was only used once in ascertaining the average mileages from that group. This method of figuring mileages and the description of short tariff routes as against shortest tariff routes is uniform in all the exhibits to follow. Authority for the rate is shown and the route is shown by letters or symbols which are explained on pages 8, 9 and 10 of the exhibit.

Q. Why did you use the particular destinations shown on page 1?

A. I used them because they were selected by the carriers at the pre-trial conference held in Chicago on November 24, 1942.

(Exhibit 77, Witness Christiansen, received in evidence.)

By Mr. Vesey:

Q. Will you refer to your Exhibit No. 78 and explain it?

A. Exhibit No. 78, identified by code reference mark N-300 in the lower lefthand corner, shows the mileages from Northern Illinois producing district origin points to certain destinations in Illinois, Iowa, and Wisconsin which the carriers have termed "compared points." The mileages are shown via short tariff and shortest tariff routes. There [fol. 2193] are also shown the present rates which are now in effect from each of the origin points to each of the destinations.

On page 1 of the exhibit is a recapitulation of the mileages to each of the destinatons shown in the exhibit, showing the average mileages via short and shortest tariff routes and the rates which are in effect at the present time. The

recapitulation is made on two bases—the first group of averages using all points of origin in the Northern Illinois producing district, and the second group of averages using the Northern Illinois going rate. In our exhibits, when we refer to the "going rate," it is generally considered that this is the lowest rate in effect from one or more points of origin in the group to the specific destination. In other words, this is the rate which would move the business if any were to move. Just as a matter of illustration, it will be noted that to Davenport, Iowa, the average mileage via the short tariff route, using all points of origin, is 137.6 miles, and that there are two different sets of rates, one at $1.25 per ton and another at $1.74 on lump and $1.57 on fine coal. The $1.25 rate is the going rate and the one which would move the coal. The second group of mileages on page 1 shows the average mileages via short tariff routes from these origin points which have the $1.25 rate, and that mileage is 138.1 via the short tariff route. On pages pages 2 to 9, inclusive, is the detail of the mileages [fol. 2194] with the average shown at the bottom of the page to each of the destinations from each origin point in the Northern Illinois producing district.

The rate to Davenport, Iowa, of $1.25 was prescribed by the Interstate Commerce Commission as a reasonable maximum rate in Docket 21020, 197 ICC 301, dated November 13, 1933. The rate from the Northern Illinois origin group to Beloit, Wisconsin, as shown on page 2, of $1.40 per ton for a haul of 125 miles via short tariff route, or 121.7 miles via shortest tariff route, was prescribed as a reasonable maximum rate in Docket 20912 and I. & S. 3536, 174 ICC 545. The rate from the Northern Illinois origin group to Moline and Rock Island, Illinois, of $1.25 per ton as shown on pages 7 and 8, was prescribed as a minimum rate in Docket 23130, 182 ICC 572, 182 ICC 603, and 197 ICC 301. The Ex Parte 115 increase of 10 cents per ton has been added to the originally prescribed rate of $1.15 to obtain the present prescribed minimum rate of $1.25 per ton.

Q. Why did you select the particular destinations used in Exhibit 78?

A. Except for the destinations of Portage and Wausau, Wisconsin, the destinations are the comparative points selected by the carriers.

Q. Why did you add to the destinations to which you have just referred the destinations of Portage and Wausau, Wisconsin?

[fol. 2195] A. These destinations were used in order to reflect rate conditions in that territory in Wisconsin where Fulton-Peoria has a differential adjustment under Southern Illinois of 70 cents per ton.

(Exhibit 78, Witness Christiansen, received in evidence.)

By Mr. Vesey:

Q. Will you refer to your Exhibit No. 79 and explain that exhibit please?

A. Exhibt No. 79, identified by reference mark N-266 in the lower righthand corner, shows the mileages from each of the origin points in the Fulton-Peoria origin group to certain destinations in Northern Illinois to which the carriers propose increases in rates which are suspended under I. & S. Docket 5139 and Illinois Commerce Commission Docket 30935. The mileages are via short tariff and shortest tariff routes. The rates shown in the exhibit are the present rates now in effect. On page one is a recapitulation of the average mileages from the Fulton-Peoria origin group to each of the destinations, using, first, all points of origin in the group, and secondly, only the going rate origin points.

On pages 2 to 7, inclusive, is shown the detail for the mileage averages shown in the recapitulation. The averages are shown at the bottom of each page for each destination via short tariff route and via shortest tariff route, using all group origin points and also using only the going rate origin points. The going rate in each instance is [fol. 2196] shown in parentheses. For instance, to Amboy, Illinois, shown on page 2, the Fulton-Peoria going rate is $1.50 per ton, although there are rates in effect from certain Fulton-Peoria origin points of $1.05, $1.45, and $1.98 per ton.

The authorities for the rates and the routes are shown with the explanations on pages 8, 9 and 10.

The carriers, in figuring their mileages, divided the Fulton-Peoria origin group into several divisions. Atkinson, where there is only one mine, was segregated from the Fulton-Peoria group, although in every instance the Atkinson rate is as high or higher than the Fulton County rate, and

notwithstanding the fact that it is the closest point in the Fulton-Peoria group to the involved destination territory. The carriers in like manner segregated Alpha, and, as I previously explained, it has a lower rate than the Fulton-Peoria origin group to only one destination out of the 100 destinations involved in this proceeding. To the other 99 destinations Alpha has the same rate as the Fulton County mines.

Victoria was similarly treated by the carriers, although to all joint-line points Victoria has the same rate as Fulton County. To a few on-line destinations in the affected territory the C. B & Q. voluntarily established rates from Victoria 5 cents a ton lower than the rates from Fulton County.

The Peoria mines were also segregated by the carriers, [fol. 2197] although these mines have rates which, in some instances are lower and in some instances higher than the Fulton County rates to a few destinations, but in most instances the Peoria rates are the same as the Fulton County rates.

Where the rate is the same as the Fulton County going rate from any origin point, that origin point should be included in ascertaining the average mileages to use in measuring that rate. For instance, to Dixon, Illinois, shown on page 4, the rate from Alpha is $1.50 per ton, which is the same as the rate from Fulton County. Hence the Alpha mileage of 77.1 miles should be used in ascertaining the average Fulton-Peoria origin group mileage in determining whether the $1.50 rate from Fulton-Peoria group to Dixon, Illinois, is a reasonable maximum or a reasonable minimum rate. Our exhibits have been prepared accordingly. In other words, in ascertaining the Fulton-Peoria average mileage, as shown on line 41 on page 4, via short tariff route using the Fulton-Peoria going rate, the mileages from Alpha and Victoria were included. Atkinson, however, was not included, as it has a rate of $1.75 per ton or 25 cents per ton more than the going Fulton-Peoria rate. There is no justification for a higher rate from Atkinson to Dixon, Illinois, than from the Fulton-Peoria origin group to Dixon, and hence it should be included in ascertaining mileages to use in measuring the reasonableness of rates to Dixon.

[fol. 2198] (Exhibit 79, Witness Christiansen, received in evidence.)

Mr. Biaett: Are you going to argue the point now? Are we going to accept that as your opinion or argument?

By Mr. Vesey:

Q. Have you made any comparison studies showing the mileage differences resulting from the carriers' method of figuring mileages and your method of figuring mileages?

A. Yes.

Q. Have you prepared an exhibit showing such information?

A. I have.

Q. Will you please explain your exhibit?

A. Exhibit No. 80, identified by code reference mark N-329 in the lower righthand corner, is a comparison of the carriers' mileages and Middle States Fuels, Incorporated's mileages from the Fulton-Peoria origin group to the affected points in the Northern Illinois territory and Beloit, Wisconsin, showing the variations and differences. The destinations are shown under Column A. The carriers' mileages from the Fulton-Peoria origin group, excluding Atkinson, Victoria, Alpha and Peoria, are shown under Column B. Under Columns C, D and E are the mileages from the Fulton-Peoria origin group. The carriers' short tariff mileages are shown in Column C; Middle States Fuels, Incorporated's short tariff mileages are also shown in Column C. The difference between the carriers' short tariff mileages and Middle States Fuels, Incorporated's short tariff mile-[fol. 2199] ages are shown under Column F.

It will be noted that there is only a slight variation, the actual difference being only one or two miles except in the case of Rochelle, where the difference is 23 miles. Middle States Fuels, Incorporated's shortest tariff mileages are shown in Column E, and the difference between its shortest tariff mileages and the carriers' short tariff mileages as shown under Column C are shown in Column G. Here again it will be noted that the shortest tariff mileages vary from the carriers' short tariff mileages by only a few miles, the maximum being 4 miles, except in the case of Rochelle, Illinois, where the mileage was figured by Middle States Fuels, Incorporated, on a different basis than that used by the carriers. The carriers used the mileages via the C. B. & Q.

direct, whereas Middle States Fuels figured the mileages via C. B. & Q. Mendota and the Milwaukee. In the C. B. & Q. tariff Rochelle is directly intermediate to Rockford. There is no specific rate published from Fulton-Peoria to Rochelle via the C. B. & Q. Mendota and the Milwaukee. There is a rate published via this route to Rockford, Illinois, a station directly north of Rochelle, which is exactly the same as the rate to Rochelle via the C. B. & Q. direct. I therefore used this route in ascertaining the mileages to Rochelle, Illinois. Under the tariff naming the rates to Rockford, namely C. B. & Q. 15000-E, I. C. C. 19670, Illinois C. C. 2064, the rate applies via this route by intermediate appli- [fol. 2200] cation, and it is a route actually in effect today. Hence, it should be used in ascertaining the mileages to Rochelle for the purpose of determining a reasonable maximum rate to that point.

Under Column H is shown the carriers' short tariff mileages, using all the origin points which take the going rate from the Fulton-Peoria origin group. The present going rate is shown in Column M, and the suspended going rate is shown in Column N.

Under Column I is shown Middle States Fuels, Incorporated's short tariff mileages, using the going rate to ascertain the points to be used, and in Column J are shown Middle States Fuels, Incorporated's mileages via the shortest tariff routes.

Under Columns K and L are shown the differences Middle States Fuels, Incorporated, as against the carriers' mileages, and here again it will be noted that the variation is very little. The carriers' mileages shown in the exhibit were taken from their Exhibit No. 3. Their Exhibit No. 3 does not show the average mileages for the Fulton-Peoria origin group. They are shown for the Alpha, Atkinson, Victoria and Fulton County groups. I therefore added together the total mileages for all of these groups shown in the carriers' exhibit and made a calculation to ascertain the average, first using all the points in the Fulton-Peoria origin group, which [fol. 2201] are shown in Column C, and, secondly, using only those origin points which have the Fulton-Peoria going rate to ascertain the averages shown in Column H. It will be seen that the carriers' mileages, determined in the same manner as followed in our Exhibit No. 79, are virtually the same as ours, except in the case of Rochelle, Illinois.

(Exhibit 80, Witness Christiansen, received in evidence.)

By Mr. Vesey:

Q. Will you refer to your Exhibit No. 81 and explain it?

A. Exhibit No. 81, identified by code reference mark N-282 in the lower righthand corner, shows the mileage from each of the origin points in the Fulton-Peoria origin group to certain destinations in Illinois, Iowa and Wisconsin which the carriers have referred to as compared points. These mileages are via short tariff routes and shortest tariff routes. Beloit, Wisconsin, is shown in this exhibit although it is also a destination in the so-called affected territory, because changes are proposed to Beloit from certain mines in Indiana, and also it is subject to a complaint from the Fulton-Peoria district in Docket 28888.

On page 1 of this exhibit is shown the recapitulation of these mileages to the destinations shown via short tariff and shortest tariff routes and also via two methods of ascertaining averages—first, using all points in the origin [fol. 2202] group, and, second, using only those points which have the so-called Fulton-Peoria going rate, and by "going rate" I mean the rate which would move the coal from the Fulton-Peoria district if and when coal moved.

On pages 2 to 10 of the exhibit is shown the detail of the mileages from each origin point via each origin railroad to each destination. The calculations as to the average mileages are shown at the bottom of the page. Taking Beloit, Wisconsin, as a destination, shown on page 2, it will be noted that the average mileage, as shown on line 38 via short tariff route, is 168.1 miles and, as shown on line 39 via shortest tariff route, 167.7 miles. The average mileages shown on lines 38 and 39 are the averages for all of the origin points shown. On lines 40 and 41 are the average mileages, via short tariff and shortest tariff route, using the Fulton-Peoria going rate, which is indicated in parentheses.

To Beloit the going rate is $1.80 and applies from all Fulton-Peoria origin group points except Atkinson. The Atkinson rate is 14 cents higher, or $1.94 per ton, although its mileage is less than that of any other origin point in the Fulton-Peoria origin group. The mileage from Atkinson is 35 miles less than the average from the Fulton-Peoria origin group. Similar information is shown on pages 2 to 10, inclusive, for each destination.

The authorities for the rates, mileages and routes are [fol. 2203] shown on pages 11, 12 and 13.

The rates shown on page 4 to Davenport, Iowa, and on page 10 to Linwood, Iowa, were prescribed by the Interstate Commerce Commission in Docket 21020, 197 I. C. C. 301, dated November 13, 1933, as reasonable, maximum rates under Section 1 of the Interstate Commerce Act. The rates shown on page 7 to Moline, Illinois, and on page 8 to Rock Island, Illinois—these two destinations are across the Mississippi River from Davenport, Iowa—were prescribed by the Interstate Commerce Commission in Docket 23130, Intrastate Rates on Bituminous Coal between Points in Illinois, 182 I. C. C. 537, and 197 I. C. C. 301, as minimum rates under Section 13 of the Interstate Commerce Act. The rate which was originally prescribed to these destinations was $1.15 per ton, to which has been added the increase authorized in Ex Parte 115, making the present rate $1.25. This $1.25 rate, therefore, has been prescribed as a reasonable maximum rate under Section 1 of the Interstate Commerce Act to the Tri-Cities, consisting of the West Bank Mississippi River cities of Davenport, Bettendorf, Iowana and Linwood, Iowa, on the one hand, and the East Bank Mississippi River cities of Moline, Rock Island, East Moline, Silvis and Carbon Cliff, Illinois, on the other hand.

(Exhibit 81, Witness Christiansen, received in evidence.)

By Mr. Vesey:

Q. Please refer to your Exhibit No. 82 and explain that [fol. 2204] exhibit.

A. Exhibit No. 82, identified by code reference mark in the lower lefthand corner, shows the present and proposed rates and the amount of increase or decrease from the Fulton-Peoria origin group to all destinations in Northern Illinois to which changes are proposed in these proceedings from the Fulton-Peoria origin group via all routes. The tariff authorities are shown on the first page for each origin railroad which names rates. The towns are arranged in alphabetical order.

The exhibit is arranged to show the present and proposed rates and the increases or decreases by grouping Fulton County and Victoria under one column, Atkinson under another column and Peoria in the last column. Where Victoria or Alpha have a different rate than Fulton County, it is indicated by the letter "A" for Alpha and "V" for Victoria. The rates from Alpha and Victoria apply only from

the C. B. & Q. as an origin railroad. Victoria is on the Galesburg & Great Eastern Railroad and connects with the C. B. & Q. at Wataga, Illinois, but its rates are published by the C. B. & Q. Railroad.

The carriers' proposal for changes in rates results in many inconsistencies which are illustrated throughout this exhibit. On page 1 the first station is Adeline. The C. B. & Q. proposes a rate of $1.65 as against the present rate via all routes of $1.64, or an increase of 1 cent per ton. The C. & N. W. proposes a reduction from $1.64 to $1.60, or a [fol. 2205] 4-cent reduction. This 4-cent reduction is also proposed from Atkinson and Peoria.

To Algonquin, Illinois, the C. B. & Q., C. & N. W., and T. P. & W. propose a reduction from $1.89 to $1.80, or 9 cents per ton, from Fulton County mines and Victoria and Alpha. There is no proposed change from M. & St. L. mines, their rate remaining at $1.89, or 9 cents higher than from C. B. & Q., C. & N. W. or T. P. & W. origin points. From Peoria, as shown in the last column, the reduction proposed via the C. & N. W. as an origin railroad is from $2.05 to $1.80, or 25 cents per ton. However, from Atkinson, the closest point of origin in the Fulton-Peoria origin group, the present rate of $1.89, which is the same today as the Fulton County rate, is to be increased to $1.94, or an increase of 5 cents per ton. Today the Atkinson and Fulton County rates to Algonquin are the same. Under the carriers' proposal the Atkinson rate will be 14 cents per ton higher than the Fulton County rates. There are many other points where similar proposals are made, such as Carpentersville, Capron, Cary, Chemung, Dundee, and other destinations.

To Rockford and Freeport from M. & St. L. mines a 15-cent increase is proposed on lump coal, but no change is proposed on fine coal, whereas via other origin roads a 15-cent increase is proposed on all sizes.

The propriety of the carriers' proposal in so far as the Fulton-Peoria origin group is concerned can well be judged [fol. 2206] by a comparison of their proposed minimum rates under Section 13 of the Interstate Commerce Act. On Fulton-Peoria coals moving to Dixon, and on Northern Illinois origin group coals moving to Freeport, Illinois, the carriers propose a minimum rate of $1.55 per ton for Fulton-Peoria coals moving to Dixon for an average dis-

tance of 121.4 miles. Their proposed minimum rate for Northern Illinois origin group coals moving to Freeport is $1.25 per ton and the average distance is 125 miles. In other words, the carriers apparently believe that a proper minimum rate structure for Fulton-Peoria coals should be 30 cents per ton more for a haul of approximately the same length. Suffice it to say that Fulton-Peoria coal operators would smile at this proposal if it did not hurt so much.

Q. Do you know of any recognized formula for the establishing of just and reasonable rates on bituminous coal which would, if applied, result in the proposed increases which are under consideration in this proceeding?

A. I not only do not know of any such formula, but I am sure that there is none.

Q. Why are you sure that there is no formula which would, if applied, produce increases and decreases such as have been proposed by the carriers in this proceeding?

A. There is absolutely no consistency in the carriers' proposal in this proceeding. This fact is clearly shown in the illustrations which are set forth in my Exhibit 82, some [fol. 2207] of which I have just explained. Neither rate scales based on mileages nor considerations of transportation conditions justifies—

Mr. Biatt: Excuse me, just a minute, Mr. Christiansen.

By Mr. Biaett:

Q. I assume that when you are arguing about transportation conditions, you are stating your opinion?

A. The carriers stated they were similar.

Q. And your opinion only carries the weight which your qualifications to make that statement attach to it, is that correct?

A. I would say that is right.

Mr. Biaett: Which is none.

Mr. Vesey: I didn't get the last statement.

Mr. Biaett: Which is none.

The Witness: Neither rate scales—

Mr. Vesey: We thank you for your generosity, Mr. Biaett.

The Witness: Neither rate scales based on mileages nor considerations of transportation conditions justifies the several proposals of freight rate increases which have been made by the carriers in this proceeding.

(Exhibit 82, Witness Christiansen, received in evidence.)

By Mr. Vesey:

Q. Have you prepared an exhibit showing the history of the rates from the Fulton-Peoria and other origin groups to Beloit, Wisconsin, and Rockford, Illinois?

A. I have.

Q. Will you please explain this exhibit?

A. This Exhibit No. 83, identified by reference mark X-258 in the lower lefthand corner, is a history of the rates [fol. 2208] on bituminous coal from the Northern Illinois, Fulton-Peoria, Southern Illinois and Brazil-Clinton, Indiana, origin groups to Beloit, Wisconsin, and Rockford, Illinois, from July 19, 1925, up to the present time. It also contains a copy of the announcement of the Director of Traffic, M. V. Hardie, of the Interstate Commerce Commission, made in I. & S. Docket 2346, and a map showing the present differential adjustment between Southern Illinois, on the one hand, and Fulton-Peoria, on the other hand, to the territory, including Illinois, Iowa, Wisconsin and Minnesota.

(Exhibit 83, Witness Christiansen, received in evidence.)

The Witness: In 1925 the carriers attempted to correct numerous discrepancies and maladjustments between destination points, including certain 4th Section departures, and to restore certain differentials between origin groups which were disrupted by the general increases in freight rates on bituminous coal in 1920 and the general reductions in 1922. They published a tariff known as the "Blue Book," which was suspended in I. & S. Docket 2346. Several conferences were held between shippers, consumers, and the carriers with the Interstate Commerce Commission. As a result of these conferences the agreement set forth in the Hardie Announcement, which is reproduced on pages 1, 2 and 3 of this exhibit was effected.

On page 4 of the exhibit is shown a map of the territories [fol. 2209] of Illinois, Iowa, Wisconsin and Minnesota on which we have shown the differential adjustment between Northern Illinois-Fulton-Peoria and Southern Illinois to the various destination territories. To the territory in Wisconsin and Minnesota and Northeastern Iowa above the wide checkered line, including the points within the wide checkered line, the differential Fulton-Peoria under Southern Illinois was made 70 cents.

Mr. Biaett: Excuse me just a minute.

By Mr. Biaett:

Q. To what territory is that?
A. It is Wisconsin.
Q. Wisconsin?
A. Minnesota.

Mr. Biaett: Mr. Examiner, I object to these statements on the grounds that territory which he is discussing is beyond the scope of these proceedings for the first reason; and for the second reason, that the differentials between Fulton-Peoria and Southern Illinois are not involved in these proceedings.

Mr. Vesey: Oh, if the Examiner please, I think we have covered that in the preceding pages of Mr. Christiansen's testimony. He gave Indiana exhibits showing the differential relationship against Southern Illinois in this territory here. If the Commission is to be given a complete picture of these differential relationships, I know of no other way than to set them forth on the map.

[fol. 2210] Mr. Biaett: Well, Indiana has an interstate case here in I. & S. 5139 that Fulton County does not have. Your situation is dealing purely with the 13th Section case, as I understand it.

The Witness: Mr. Kuhls showed them in his exhibit. I don't know why I can't.

Exam. Trezise: So much of that has already been shown it would be improper for the Examiner to rule it out now. I don't know whether it belongs in here or not but it has already been put in two or three times and referred to, so I think that we will just have to let it go in now.

By Mr. Vesey:

Q. Will you proceed.

A. To the territory in Wisconsin and Minnesota and Northeastern Iowa above the wide checkered line, including the points within the wide checkered line, the differential Fulton-Peoria under Southern Illinois was made 70 cents. The Northern Illinois differential under Southern Illinois in Wisconsin north of the wide checkered line was also fixed at 70 cents. These differential adjustments in Wisconsin were based upon the fact that for the longer hauls to this territory the difference in distance as between Fulton-Peoria, on the one hand, and Northern Illinois, on

the other hand, would not support different differential adjustments, hence they were made the same. To the territory on the map in the southwestern part of Wisconsin,—

Mr. Biaett: Excuse me just a minute. I don't understand [fol. 2211] that question. It sounds like it is purely argumentative as to how a differential adjustment was made.

Mr. Vesey: If the Examiner please, it is a statement of fact and Mr. Biaett—

Mr. Biaett: It is not a statement of fact.

Exam. Trezise: The only objectionable word I can see is "hence." If you want to strike out the word "hence," you can say they were made the same. That was a fact.

Mr. Biaett: I don't care about his using "hence." What I object to his stating is what they were based upon. That is not the fact.

Exam. Trezise: Yes, he stated they were based in a certain way. He is their witness testifying. He can testify to anything. You can cross examine him; if it is pertinent to the case.

Mr. Biaett: All right.

By Mr. Vesey:

Q. Will you proceed, Mr. Christiansen.

A. To the territory on the map in the southwestern part of Wisconsin, which is shown by diagonal shaded lines, the Fulton-Peoria origin group was made 79 cents under Southern Illinois and the Northern Illinois origin group was made $1.00 under Southern Illinois, thus reflecting a fundamental principle in freight rate making that as mileage decreases differentials or differences increase. This territory included Beloit, Wisconsin, located just north of the Illinois-[fol. 2212] Wisconsin state line.

The same principles were followed by the Interstate Commerce Commission in relating the Fulton-Peoria origin group to the Southern Illinois origin group at destinations in Iowa. In Docket 26558, decided in 232 ICC 5, the Southern Illinois rate to the northeastern and eastern part of the state of Iowa was made 70 cents over Fulton-Peoria. This case was decided November 21, 1938.

The differential relationship between the Fulton-Peoria origin group and the Southern Illinois origin group in the territory comprising the southwestern part of Wisconsin, including Beloit, remained as fixed in the 1925 agreement

until October 27, 1933. On October 27, 1933, this adjustment was disrupted at Beloit, Wisconsin, only by a peculiar chain of circumstances. However, some explanation is required for a full understanding.

In 1925 when the 79-cent differential Fulton-Peoria under Southern Illinois was agreed upon, the freight rate from Southern Illinois to Beloit was $2.75. The Hardie Agreement provided for a minimum rate of $1.90 from the Fulton-Peoria origin group to Beloit—

Mr. Stadell: I object to that, Mr. Examiner. He is talking about an agreement here, a so-called agreement; and there is no evidence at all that the parties to this proceeding were ever a party to any such agreement as he [fol. 2213] has referred to; and he is also referring to the fact that in that agreement, that agreement provided for a minimum rate of $1.90 from the Fulton-Peoria origin group to Beloit. There is nothing that I can find in the agreement, or so-called agreement that he has attached as a part of his Exhibit 83, that provides for a minimum rate.

Mr. Vesey: Mr. Christiansen, instead of referring to it as the "Hardie Agreement," will you refer to it, please, as the "Hardie Announcement," so that we won't have any implications in the record that someone agreed to that.

Exam. Trezise: You wish to change that to "announcement," you say?

Mr. Vesey: Yes, wherever it appears in his prepared statement as "agreement," may we have it understood that the reporter will show it in her permanent record as "announcement."

Exam. Trezise: That is sufficiently shown in the exhibit here? I think we will let that go in.

Mr. Vesey: Proceed.

Mr. Stadell: With that modification?

Exam. Trezise: With that modification, yes.

The Witness: The Hardie Announcement provided for a minimum rate of $1.90 from the Fulton-Peoria origin group to Beloit even though it provided for the 79-cent differential, which thus resulted in a going rate of $1.96, or 6 cents over the announced minimum. In the Fairbanks-Morse case, Docket 25419, the Interstate Commerce Commission pre- [fol. 2214] scribed destination differentials on coal between Rockford, Illinois, and Beloit, Wisconsin. This destination differential was fixed at 25 cents per ton pursuant to the

provisions of Section 3 of the Interstate Commerce Act. To effectuate this direction by the Interstate Commerce Commission the carriers reduced the rates to Beloit from all other origin groups except the Fulton-Peoria origin group and established the rates at levels which would preserve the then-existing differentials between such origin groups and Southern Illinois. There was nothing in the ICC decision in the Fairbanks-Morse case to warrant this discrimination by the carriers against the Fulton-Peoria origin group. Nevertheless, in so far as Fulton-Peoria is concerned, the carriers chose to disregard the fixed differential relationship between Fulton-Peoria and Southern Illinois and merely reduced the rate from Fulton-Peoria to Beloit from $1.96 to $1.79 per ton, or a reduction of 17 cents per ton instead of the 50-cent per ton reduction accorded Southern Illinois and other origin groups. Hence, the differential for Fulton-Peoria under Southern Illinois by this action was decreased from 79 cents to 46 cents per ton, a reduction in the differential relationship of 33 cents per ton.

Had the carriers chosen at this time to apply the same principles of freight rate making in the Fulton-Peoria origin group to the destinations of Rockford and Beloit which [fol. 2215] they accorded to the other Illinois origin groups, namely, the preserving of the fixed differentials, Fulton-Peoria would have been accorded a 50-cent per ton reduction in its freight rate to Beloit and the destination differential of 25 cents per ton between Beloit and Rockford would have resulted in a corresponding reduction of the rate from Fulton-Peoria to Rockford, and the Fulton-Peoria operators would have been relieved of the almost continuous freight rate controversies involving this territory, which have continued down to today.

One year later the carriers voluntarily made an attempt to correct the injustice visited upon Fulton-Peoria in their tariffs of October 27, 1933. On November 29, 1934, they reduced the Fulton-Peoria rate to Rockford from $1.54 per ton to $1.40 per ton, which occasioned a corresponding reduction in the Fulton-Peoria rate to Beloit. As a result of this action, the differential relationship between Fulton-Peoria and Southern Illinois was increased from 46 cents per ton to 60 cents per ton and it has remained at this figure since that time. The action of the carriers in this

instance was occasioned by the filing of a tariff by the M. & St. L. Railroad for an increase in its freight rate from the Fulton-Peoria origin group to Rockford. The M. & St. L. rate was at that time $1.40 per ton, and they sought to increase it to $1.54, which latter rate was in effect by other carriers serving the Fulton-Peoria origin group. Strenuous objection to this proposal was made and, in addi- [fol. 2216] tion, a complaint against the Rockford rate of $1.54 was filed with the Illinois Commerce Commission by certain producers in the Fulton-Peoria origin group. The M. & St. L. proposed rate increase was suspended by the Illinois Commerce Commission, but before a determination was made the carriers voluntarily made the reduction above referred to in the Rockford rate of 14 cents per ton, thus establishing a rate of $1.40 for all carriers serving the Fulton-Peoria origin group on coal moving to Rockford.

Thus as a result of the action of the carriers growing out of the Fairbanks-Morse case in 1933, and the readjustment in 1934, the Fulton-Peoria origin group suffered a 19-cent per ton reduction in its differential relationship with Southern Illinois fixed in the Hardie Announcement in 1925, and instead of having a 79-cent differential under Southern Illinois at Beloit, it came out of these proceedings with a 60-cent differential. Correction of this inequity should now be made before any further consideration is given to the freight rate increases requested by the carriers in their 13th Section petition, and before any further attempt is made to relate the rates on coal moving from Illinois and Indiana origin groups to Rockford, so as to establish destination differentials between Rockford and Beloit as prescribed in the reopened Fairbanks-Morse case, Docket 25419. As an aid to the bringing about of this result, the complaint in Docket 28888 was filed by the Fulton-Peoria [fol. 2217-2219] producers.

In this connection I want to call attention to the fact that Fulton-Peoria, in the movement of coal to Beloit, Wisconsin, by virtue of the 1933 and 1934 adjustments, not only suffered a reduction in its 1925 differential in so far as Southern Illinois was concerned, but also suffered the same loss in differential relationship in so far as all other origin groups are concerned.

By Mr. Vesey:

Q. You stated, Mr. Christiansen, that the Hardie Announcement provided for a minimum rate from Fulton-Peoria to Southern Wisconsin destinations of $1.90 per ton. You further stated that the carriers, as a result of the Fairbanks-Morse decision in Docket 25419, reduced the Fulton-Peoria rate to Beloit from $1.96 to $1.79 per ton, and in 1934 to $1.65 per ton. Will you please tell us what effect should, in your opinion, be given the minimum rate prescription in the 1925 announcement of $1.90 per ton on coal moving from the Fulton-Peoria origin group to Beloit, Wisconsin?

A. The minimum rate from Fulton-Peoria to Beloit of $1.90 provided for in the 1925 announcement was predicated upon a rate of $2.75 per ton applying from Southern Illinois to Beloit.

* * * * * * *

[fol. 2220] By Mr. Vesey:

Q. Proceed, Mr. Christiansen.

A. The minimum rate prescription cannot be observed if substantial reductions are made by the carriers in the rates from Southern Illinois and other origin groups. Changing conditions naturally require changes in rates. They do not require changes in differential relationships once proper differentials are established.

On pages 6 and 7 of my Exhibit 83 I have shown the freight rate changes which have occurred since 1925 to Rockford and Beloit.

Q. Have you prepared an exhibit showing car-mile earnings of coal as compared with the car-mile earnings of other commodities between the Fulton-Peoria district and Beloit, Wisconsin?

A. I have.

Q. Will you please explain this exhibit?

A. Exhibit No. 84, identified by code reference mark N-274 in the lower left-hand corner, is a statement comparing the average revenue received per car and per car-mile on bituminous coal with other commodities moving between the Fulton-Peoria district at Beloit, Wisconsin.

[fol. 2221] The revenue per car on the present Fulton-Peoria rate of $1.80 per net ton on bituminous coal moving to Beloit, Wisconsin, is higher than the revenue per car on

all of the other commodities shown in the exhibit. The revenues per car-mile on coal is likewise higher than the revenue per car-mile on the other commodities. Coal earns more per car-mile from Fulton-Peoria to Beloit, Wisconsin, than do such perishable commodities as watermelons, tomatoes, cabbages, packing house products, cured meats and livestock. From a value standpoint bituminous coal is one of the so-called low-value commodities. The Commission has stated many times that the best comparison of different commodities is made using the car-mile earnings.

The movement on bituminous coal from the Fulton-Peoria district to Beloit, Wisconsin, in 1942 was approximately 6,000 tons. This may not be true of some of the other commodities shown in the exhibit. Nevertheless, if anyone offered a car-load of any one of these commodities the carriers would charge the amounts shown for the transportation of that commodity even though only one car per year was handled. There is a movement of agricultural implements such as tractors and combines from Peoria, Illinois, to Beloit, Wisconsin, on which the car-mile earnings range from 7 cents to 11 cents per car-mile less than the car-mile earnings on bituminous coal. The value of tractors and combines in carload lots runs into thousands of dollars, whereas the value of a carload of coal would not exceed [fol. 2222] $125. The exhibit shows the transportation cost burden placed on bituminous coal and the high level of rates on bituminous coal from the Fulton-Peoria origin group to Beloit, Wisconsin.

(Exhibit 84, Witness Christiansen, received in evidence.)

By Mr. Vesey:

Q. Will you please refer to your Exhibit No. 85 and explain this exhibit?

A. Exhibit No. 85, identified by code reference mark N-324 in the lower lefthand corner, is an exhibit containing 42 pages. The exhibit contains various analyses of the rates and mileages from various origin groups in Illinois to destinations in Illinois which are in the so-called suspended or affected territory, including Beloit, Wisconsin, and a comparison of these rates and mileages with the rates and mileages from these same origin groups to destinations in the so-called compared territory in Southern Wisconsin.

The exhibit has been prepared so as to show the results obtained from a consideration of various known methods of ascertaining just and reasonable freight rates on bituminous coal. It contains an analysis of rates under the 13th Section proceeding, Docket 28881, an analysis of rates under I. & S. Docket 5139, an analysis of rates under Docket 30935, the Illinois Commerce Commission's suspension case, an analysis of rates under Docket 31295, the so-called Dixon case, and an analysis of rates under Docket 28888, the so-
[fol. 2223-2225] called Middle States Fuels, Inc. complaint case, involving rates from the Fulton-Peoria origin groups to Beloit, Wisconsin.

All the rates and mileages shown in this exhibit are taken from previous exhibits introduced in evidence in this proceeding. When the exhibit was prepared the increases authorized in Ex Parte 148 were in effect and constituted additions to the rates shown in the exhibit. The Ex Parte 148 increases were cancelled as of May 15, 1943. Hence, the rates shown in the exhibit are present actual rates, except where a specific notation to the contrary appears.

(Exhibit 85, Witness Christiansen, received in evidence.)

. . . . . .

[fol. 2226] By Mr. Vesey:

Q. Now, go ahead. I think, Mr. Christiansen, the last question I asked you was, in view of your explanation of the contents of the exhibit, will you please go through the exhibit page by page and explain the various analyses of mileages and rates which are shown thereon; and I am referring to Exhibit No. 85.

A. Page 1 of the exhibit is a table of contents showing the pages on which the various analyses are shown.

Page 2 of the exhibit shows the Midland Electric scale prescribed in Midland Electric Coal Corporation versus C. & N. W. Railroad, et al. 232 ICC 5. This scale was prescribed for application from the Fulton-Peoria origin group to interior Iowa destinations. The scale was prescribed prior to the increases authorized in Ex Parte 115 and we have, therefore, increased the scale to include the Ex Parte 115 increases. The Midland Electric scale was prescribed for application over the shortest tariff routes using each origin point once. We have made various com-

[fol. 2227] parisons with this scale showing percentages thereof from the Fulton-Peoria origin group to destinations in both the affected and compared territories, and, in making these comparisons, we have used the shortest tariff route mileages, which was the same method of ascertaining mileages under which the scale was prescribed from the Fulton-Peoria origin group to interior Iowa destinations. The Midland Electric scale was prescribed for application from the Fulton-Peoria origin group to interior Iowa destinations. Traffic conditions are not as favorable from the Fulton-Peoria origin group to destinations in interior Iowa as they are between points within the state of Illinois or to Southern Wisconsin in the so-called Illinois Freight Association territory, and this fact is shown in detail on another page of this exhibit.

Page 3 is a statement showing the so-called 23922 scale prescribed in 190 ICC 743 for application from Indiana to Illinois destinations. This scale was prescribed to become effective on May 4, 1933, prior to the increases authorized by the Commission in Ex Parte 115. We have, therefore, added Ex Parte 115 increases, which are included in the scale shown on page 3. This scale was prescribed for a maximum haul of 300 miles, and in this exhibit it has been extended at the rate of 8 cents per ton for each 25-mile block beyond 300 miles. It was prescribed for application over the shortest route over which carload traffic can be [fol. 2228] moved without transfer of lading, which is commonly referred to as the "short-circuit route." Any comparisons with this scale must be made by using the mileages via short-circuit routes rather than mileages via short tariff or shortest tariff routes. There are only a few mileages available in this proceeding from the origin groups via short-circuit tariff routes, hence in making comparisons with the 23922 scale, allowances should be made to compensate for the longer mileages resulting from use of the short tariff or shortest tariff routes.

Exam. Trezise: Now, right there, of course that opinion is going to be the authority as to how the distances were figured.

Mr. Biaett: Exactly.

Exam. Trezise: And if it is at variance from what the witness has said, of course it is the opinion that is going to govern there.

The Witness: That is correct.
Mr. Stadell: Just a second.

By Mr. Stadell:

Q. You refer to the mileages there, Mr. Christiansen, via the short-circuit tariff routes. You meant short-circuit routes without any——
A. No, I said short-circuit routes.

Mr. Vesey: I think you did misspeak and say "short-circuit tariff routes"; you meant short-circuit routes; which would be in the fourth line from the bottom there of page 28. [fol. 2229] The Witness: Short-circuit routes.

By Mr. Vesey:

Q. Will you proceed, please.
A. On page 4 is shown the Holmes and Hallowell Maximum Scale prescribed in 69 ICC 11, brought up to date. The various percentages of the scale are shown for the convenience of the parties. The Holmes and Hallowell maximum scale was prescribed by the Commission for application from the Lake Superior docks to destinations in Wisconsin, Minnesota, North and South Dakota. This scale has been used in many cases for the purpose of measuring rate levels. It was prescribed for application over the shortest possible route, using not more than 3 rail lines over which carload traffic could move, and has sometimes been referred to as the "short-circuit route, using a maximum of 3 lines." However, the routes over which the traffic moves do not follow the routes over which the rates were made because the carriers have endeavored to move the traffic over the route which would give them the longest hauls. There are some instances where the shortest possible route, using not over 3 lines of railroad, is the same as the route over which the traffic moves, but in many cases this is not true. In making a comparison of the rates via short tariff route or shortest tariff route from the origin groups in the Illinois and Indiana producing districts to the destinations involved in these proceedings with the Holmes and Hallowell Maximum Scale of rates, consideration must be given to the fact that in the actual [fol. 2230] application of the Holmes and Hallowell Maximum Scale in the Holmes and Hallowell territory, a lower

level of rates obtains even though the Holmes and Hallowell scale is used in setting up the rate structure, due to the fact that the traffic actually moves over the shortest tariff route, whereas the scale was made by using the short-circuit route using a maximum of 3 rail lines. Thus in actuality the rate level on which the traffic moves in Holmes and Hallowell territory is about 90 per cent of the Holmes and Hallowell scale.

To get a true comparison between the rates from Illinois and Indiana origin groups and the Holmes and Hallowell scale rates to the destinations involved, it is necessary to use the same method of ascertaining mileages, namely, the short-circuit route using not more than 3 rail lines. These mileages from Indiana and Illinois origin groups are not available in this proceeding.

The Holmes and Hallowell scale was prescribed for a territory in which the transportation conditions are admittedly not as favorable as in Illinois Freight Association territory and the level of rates in the Illinois Freight Association territory should reflect the better transportation conditions which prevail therein.

By Mr. Biaett:

Q. I presume you are going to introduce some evidence on that point later on, Mr. Christiansen?

A. The Commission has said so a dozen times.

[fol. 2231] Mr. Biaett: What the Commission has said in a prior case is not evidence in this proceeding.

Mr. Vesey: If you will just bear with us, Mr. Biaett, and save your argument, I think we will get along better.

By Mr. Vesey:

Q. Will you proceed, Mr. Christiansen.

A. Page 5 is a statement showing the level of class rates from Illinois to interior Iowa as against Illinois to Illinois Freight Association Territory for like distances. The level of class rates from the Fulton-Peoria district to Illinois destinations is 81.7 per cent of the level of class rates from Fulton-Peoria to Interior Iowa destinations using Class D as the basis for the class rates. The level of rates on bituminous coal from Fulton-Peoria to Illinois destinations should be lower than the level of rates on bituminous coal from Fulton-Peoria to interior Iowa destinations by

an amount sufficient to reflect this difference in the class rate level. These class rates were prescribed by the Interstate Commerce Commission in Western Trunk Line Class Rate Investigation, 17000 Part 2, 164 ICC 1, and the Eastern Class Rate Investigation, 164 ICC 314, and, presumably, were fixed to reflect the difference in transportation conditions between the two territories.

On page 6 is shown a comparison of the rates prescribed from Missouri mines to Iowa destinations in the Huntsville Sinclair Mining Company case, 209 ICC 477, with the present rates, proposed rates, and Class D rates from Fulton-[fol. 2232] Peoria to the Northern Illinois destinations and Beloit, Wisconsin, and also a comparison of the foregoing rates with the Huntsville Sinclair scale rate adjusted so as to reflect the better transportation conditions which prevail in Illinois.

On Lines 1 to 13, inclusive, are shown the mileages via shortest tariff route, the present and proposed rate, the Class D rate, what the rate would be under the Huntsville scale, which is the basis prescribed from the North Missouri Mines to Iowa, and under the last column, column G, we have shown what 71.4 per cent of the Huntsville Sinclair scale shown in Column F would be. This 71.4 per cent reflects the difference in levels of the class rates in the two territories.

Under column E we have shown the class rates, using Class D as representative, from Fulton-Peoria district to the Illinois destinations, including Beloit, Wisconsin, which results in an average rate of 14.5 cents per hundred pounds. From the North Missouri mines to five Wisconsin destinations with mileages approximately the same as from Fulton-Peoria district to these Illinois destinations, including Beloit, the average Class D rate is 20.3 cents. Therefore, the class rate level from the Fulton-Peoria district to the Illinois destinations is 71.4 per cent of the class rate level from Missouri to Iowa destinations.

Mr. Wilkinson: Just a minute.

By Mr. Wilkinson:

Q. You said "from the North Missouri mines to five [fol. 2233] Wisconsin destinations."

A. Five Illinois——

Q. Don't you mean five Iowa destinations?

A. Five Iowa destinations. Therefore the class rate level from the Fulton-Peoria district to the Illinois destinations is 71.4 per cent of the class rate level from Missouri to Iowa destinations. These class rates were prescribed to reflect the better transportation conditions in Illinois Freight Association territory as against Western Trunk Line territory, the haul from North Missouri mines being all in Western Trunk Line territory. Therefore, if it is proper to have the class rates from Missouri to Illinois destinations 71.4 per cent of the class rates from Missouri to Iowa destinations, then the same lower level of coal rates should apply as a reasonable basis of rates from the Fulton-Peoria district to these Northern Illinois destinations, including Beloit.

On lines 1 to 13, inclusive, under Column G, we have shown what these rates would be. The rate would be $1.12 at Dixon and Sterling, $1.15 at Amboy, $1.26 at Rockford, $1.38 at Freeport, and $1.30 at Beloit. The carriers have testified that the level of rates within the Illinois Freight Association territory on bituminous coal are low. This comparison shows that they are entirely too high compared with what the Commission has prescribed in other territories for hauls where the transportation conditions are much more adverse, and I believe it is time that the Illinois [fol. 2234] Freight Association be given a level of rates on coal comparable with the level of rates fixed in the surrounding territory and reflecting its better transportation conditions.

On page 7 is a tabulation showing that differences in distance become more important as the mileage decreases, and, therefore, the rate differentials or differences should increase as the length of the hauls decrease. Six destinations are shown on the tabulation which have mileages ranging from 126 miles to 407 miles via shortest tariff route from Fulton-Peoria origin groups, and from 310 miles to 605 miles from the Southern Illinois origin group.

As shown under Column G, there is very little variation in the distance differential Fulton-Peoria compared with Southern Illinois at each destination. The distance differential varies from 184 miles at Dixon, Illinois, to 228 miles at Beloit, Wisconsin, using the shortest tariff route mileage. This difference in distance computed via shortest tariff route varies from 59.3 per cent of the Southern Illinois mileage at Dixon to 32.4 per cent of the Southern

Illinois mileage to Wausau, Wisconsin. On the other hand, the differential in the rates is only 50 cents at Dixon, Illinois, where the mileage differential is of more importance and, as against this rate differential, the rate differential at Wausau, Wisconsin, is 70 cents.

If we apply accepted standards of rate-making and use the differential at Wausau as a base, the rate differential at [fol. 2235] Janesville, Wisconsin, would be 79 cents, which it happens to be; at Beloit, Wisconsin, the differential should be at least 79 cents——

By Mr. Vesey:

Q. You mean "would be."

A. Would be at least 79 cents, which it is not; at Rockford, Illinois, the differential would be approximately 85 cents; and at Dixon, Illinois, the differential would become approximately 85 cents. If such adjustments were made it is significant to note that the 85-cent differential at Dixon, Illinois, would establish comparable rates to Fulton-Peoria's present differential under Southern Illinois at Davenport, Iowa, which is $1.00.

The purpose of the comparisons shown on page 7 is to show merely by another method of comparison that the rates from the Fulton-Peoria origin group to Dixon, Rockford and Beloit are too high at the present time, and instead of being increased as proposed by the carriers, they should be decreased.

Mr. Biaett: Just a minute, please. I want the record to show that I object to the statements of Mr. Christiansen on page 34 of his prepared statements for the reasons I have given before, that the differential relationship between Southern Illinois and Fulton County is not involved in these proceedings.

By Mr. Vesey:

Q. Will you proceed, Mr. Christiansen?

Mr. Biaett: And move that they be stricken.

Mr. Vesey: Now, if the Examiner please, I don't think [fol. 2236] that necessitates a reply, that they be stricken. I think I have answered that before. I am not going to elaborate on it now.

Exam. Trezise: The Examiner has ruled on that.

Mr. Biaett: The Examiner has ruled on that. I want the record to show that I have moved it be stricken, though.

By Mr. Vesey:

Q. Do you know of any reason, Mr. Christiansen, why the rates from the Fulton-Peoria origin group and other origin groups in Illinois and Indiana to the destinations in the Northern Illinois territory should not be first increased, as proposed by the carriers, and then adjusted as you have suggested in your several exhibits, including the tabulation shown on page 7 of Exhibit 85?

A. Yes. The Interstate Commerce Commission has held many times that under a properly established freight rate pattern the rate differentials or differences should decrease as the distance increases, or, stated in reverse, that as the length of the haul decreases the rate differential or difference should increase. In order that proper rates may ultimately be established for the coals produced in Illinois and Indiana which move to the destinations in the Northern Illinois territory involved in this proceeding, it is a fundamental requisite that a proper rate pattern or rate basis be first established. Once this is done, then increases or decreases for the origin groups in Illinois and Indiana may [fol. 2237] be considered as a whole. If this is not done, such increases or decreases tend to preserve unjust and unreasonable rate relationships and rates, with the consequent result that what may under one consideration be a proper and justifiable rate increase is prohibited in the first instance because the rate which would flow from such increase would still be an unjust and unreasonable rate.

I have attempted in my exhibits to focus attention upon this fact, with the hope that the Commission will recognize the validity of this contention and build a proper foundation before it considers the superstructure.

On page 8 is shown a comparison of the rates to Beloit, Wisconsin, with the rate prescribed by the Interstate Commerce Commission in Commonwealth of Kentucky vs. Illinois Central Railroad, decided December 22, 1942, in which the Interstate Commerce Commission prescribed as a reasonable rate a rate from Western Kentucky to Chicago, Illinois, of $2.30 for 393 miles. The Midland Electric Scale for 393 miles is $3.18. The rate prescribed from Western Kentucky to Chicago, as shown on line 6, is 72.3 per cent of the Midland Electric Scale.

Mr. Wilkinson: Just a minute, I think that is objectionable because that particular case, the order has been reopened for further hearing. It is not an outstanding order.

Exam. Trezise: I think we may show, of course, that the case has been reopened for further hearing.

Mr. Vesey: I intended to ask a question on that as soon [fol. 2238] as he answers the question here.

Exam. Trezise: All right, proceed.

The Witness: 72.3 per cent of this scale would produce a rate from Southern Illinois to Beloit, Wisconsin, of $2.30. If Fulton-Peoria were made 79 cents under Southern Illinois, the Fulton-Peoria-Beloit rate would be $1.51, as shown on line 9. If $2.30 is a reasonable maximum rate from Western Kentucky to Chicago, both the Southern Illinois and the Fulton-Peoria rates to Beloit are unjust and unreasonable and should be corrected before any level of rates is prescribed to the Northern Illinois destinations under Section 13 of the Act. This exhibit also shows the present rate from Western Kentucky to Chicago and the percentage this rate is of the Midland Electric Scale. This percentage is 75.5 per cent as shown on Line 7.

By Mr. Vesey:

Q. That case, Mr. Christiansen, to which you have just referred, has been, upon petition, reopened for further hearing, has it not?

A. Yes, it has.

Q. And that further hearing has now been set for October 27, is that correct?

A. That is right.

Q. Proceed.

A. On page 9 is shown a comparison between the present and proposed rates from the Fulton-Peoria origin group to certain destinations in Northern Illinois, together with the ten-mile earnings produced by such rates. In addition, [fol. 2239] there is shown under column G the rate which would obtain from the Fulton-Peoria origin group to the destinations shown under column A if such rate was set at 72.3 per cent of the Midland Electric Scale.

As shown on line 13, the 72.3 per cent figure used under column G is based upon the rate prescribed by the Interstate Commerce Commission in the so-called West Kentucky case in its order dated December 22, 1942. A comparison of

the rates which would obtain if the Interstate Commerce Commission's decision in the West Kentucky case were followed, with either the present rates or the proposed rates, discloses that the application of the Commission's prescription would result in substantial reductions of the rates from the Fulton-Peoria origin group to the destinations shown under column A. Since the transportation conditions which prevail between the Fulton-Peoria origin group and the destinations shown under column A are much more favorable than the transportation conditions which obtain between West Kentucky and Chicago, Illinois, it is to be presumed that the Commission would, if called upon to do so, prescribe lower rates from the Fulton-Peoria origin group to the destinations shown under column A than those set forth under column G, if given an opportunity to do so.

On page 10 are shown the mileages and the rates from the Fulton-Peoria and Southern Illinois origin groups to Beloit, Wisconsin, and to Janesville, Wisconsin, and the difference in the mileage and the difference in the rate to [fol. 2240] these two destinations from both origin groups. There is also shown on page 7 the gradation in the rate from these two origin groups which would apply to the mileage differential involved if the various rate scales prescribed by the Interstate Commerce Commission were applied.

On coal moving from the Fulton-Peoria origin group to Beloit and Janesville, Wisconsin, the mileage differential is 14 miles, that is, Beloit is 14 miles nearer to the origin group than Janesville. The difference in the rates from the Fulton-Peoria origin group to these two destinations is 20 cents. In other words, the railroads reduced their charge on shipments from the Fulton-Peoria origin group to Beloit 20 cents for the 14-mile shorter haul involved.

On shipments from Southern Illinois to Beloit and Janesville the mileage differential is 11 miles, that is, Beloit is 11 miles nearer to the origin group than Janesville. The difference in the rates from the Southern Illinois origin group to these two destinations is 39 cents. In other words, the railroads reduced their charge on shipments from the Southern Illinois origin group to Beloit, Wisconsin, 39 cents for the 11-mile shorter haul involved.

Hence we ask why should a 11-mile reduction in distance result in a 39-cent reduction in rate from Southern Illinois and a 14-mile reduction in distance result in only a 20-cent reduction in rate for Fulton-Peoria. It seems obvious that

[fol. 2241] under these circumstances the Fulton-Peoria rate should be reduced at least an additional 19 cents, so as to put it on a comparable rate basis with Southern Illinois.

On lines 5 to 14 on page 10 are shown the gradations which would apply in the rates from both the Fulton-Peoria and Southern Illinois origin groups on shipments to Beloit and Janesville if the various rate scales prescribed by the Interstate Commerce Commission were applied. For example, if the Docket 23922 scale were applied it would result as shown on line 5 in a rate difference for Fulton-Peoria of 10 cents, and for Southern Illinois of 8 cents. Similarly, if the Holmes & Hollowell scale were applied as shown on line 6, the Fulton-Peoria rate differential would be 19 cents and the Southern Illinois differential 12 cents.

The differentials that were obtained under the various other rate scales are shown on lines 7 to 14, inclusive. The significant fact in connection with the application of the prescribed rate scales is that for the shorter haul a greater differential is prescribed. In other words, in the rate scales prescribed by the Interstate Commerce Commission the rate difference or differential increases as the mileage or length of haul decreases. As pointed out on lines 1 to 4, the absolute converse of this principle now obtains in the case of shipments from Fulton-Peoria and Southern Illinois to Beloit and Janesville. It is this radical departure [fol. 2242] from recognized freight rate making principles that occasions our complaint in Docket 28888, and our objection to the use of Beloit, Wisconsin, as a basis for the increases proposed by the carriers in Docket 28881.

Mr. Vesey: I ask that there be stricken the word, Mr. Examiner, in Mr. Christjansen's answer reading as follows: "our complaint in Docket 28888."

Mr. Wood: Where, now?

Mr. Vesey: Comma, "and."

Mr. Wilkinson: You want to strike the comma?

Mr. Vesey: That is right, I want the comma and the word "and" stricken, so that the words stricken will read, "our complaint in Docket 28888, and." I ask that that be physically stricken, so that the sentence, as corrected, will read, "It is this radical departure from recognized freight rate making principles that occasions our objection to the use of Beloit, Wisconsin as a basis for the increases proposed by the carriers in Docket 28881."

By Mr. Vesey:

Q. Proceed, Mr. Christiansen.

A. On page 11 is shown in chart form the information shown on page 7.

If the normal gradation which obtains under the various rate scales for the length of haul involved from Fulton-Peoria and Southern Illinois to Beloit and Janesville were recognized, and the rate from Fulton-Peoria predicated [fol. 2243] upon the present rate base applying from Southern Illinois to Beloit and Janesville, the Southern Illinois rate difference of 39 cents would be continued and the rate from Fulton-Peoria to Beloit would be fixed at approximately 45 cents per ton below the present Fulton-Peoria rate to Janesville, or at $1.55 per ton.

On page 12 is shown a comparison of the rates and mileages from the Fulton-Peoria origin group and the Southern Illinois origin group to certain destinations in Wisconsin, Iowa and Northern Illinois. In addition thereto are shown the rates and mileages from the Northern Illinois origin group to Beloit, Wisconsin, only.

Under column A is shown the origin group. Under column B is shown the destination. Under column C is shown the present rate. Under column D is shown the mileage via short tariff route. Under column E is shown the mileage under shortest tariff route. Under column F is shown the mileage difference via short tariff route, that is to say, the difference in the distance from Southern Illinois and Fulton-Peoria to the destination shown. For example, under column F on line 3 the figure 240 appears, which figure means that the distance from Southern Illinois, to Beloit, Wisconsin, is 240 miles greater than the distance from Fulton-Peoria to Beloit, Wisconsin. Under column G is shown the mileage difference between Fulton-Peoria and Southern Illinois to the particular destination shown when figured via the shortest tariff route. Under column [fol. 2244] H is shown the present rate differential between Southern Illinois and Fulton-Peoria origin groups to the destination shown.

The rates and mileages from the Northern Illinois origin group to Beloit shown on line 2 were set forth in the exhibit because this rate was prescribed as a reasonable maximum rate in ICC Docket 20912 and in I & S Docket 3536, which decisions appear in 164 I. C. C. 543 and 174 I. C. C. 545,

and because they afford an opportunity to compare rates established by the Interstate Commerce Commission with the rates established by the carriers for Fulton-Peoria and Southern Illinois coal going to Beloit, Wisconsin, which said rates are the subject of consideration in these proceedings. The prescribed rate from the Northern Illinois origin group to Beloit is $1.40 per ton and the haul via shortest tariff route is 122 miles. The rate from Fulton-Peoria to Beloit as shown on line 1 is $1.80 per ton and the haul via shortest tariff route is 169 miles. The rate from Southern Illinois to Beloit is $2.40 per ton for a haul via shortest tariff route of 397 miles. Thus, as shown on line 2, Fulton-Peoria, on coal moving to Beloit, now pays a rate which is 40 cents per ton higher than the Northern Illinois rate to this destination and the length of the haul from the Fulton-Peoria origin group is only 47 miles greater than from Northern Illinois.

Stated in other words, the rate differential assessed against the Fulton-Peoria origin group for this 47-mile [fol. 2245] longer haul is approximately 1 cent per ton-mile.

The difference in distance between Southern Illinois and Fulton-Peoria to Beloit is 240 miles via short tariff route and 228 miles via shortest tariff route. For these mileage differences Southern Illinois pays 60 cents per ton. Entirely different differentials have been prescribed or approved by the Interstate Commerce Commission at other destinations in Wisconsin, Illinois and Iowa. For example, at Janesville, Wisconsin, the approved differential is 79 cents; at interior Iowa destinations 70 cents; at Davenport, Iowa, $1.00; at Clinton, Iowa, 92 cents; and at Dubuque, Iowa, 70 cents. The mileage differences between Southern Illinois and Fulton-Peoria at these destinations vary from 198 to 228 miles. The mileage difference between Southern Illinois and Fulton-Peoria at Beloit, Wisconsin, is 228 miles via shortest tariff routes or 240 via short tariff routes.

Page 13 shows the differential or difference Southern Illinois over Fulton-Peoria district to Beloit, Wisconsin, compared to the differential or difference which would prevail if a straight scale of rates were applied. The 23922 scale prescribed in 190 I. C. C. 743 for application from Indiana to Illinois destinations, if applied to the mileage from Fulton-Peoria and Southern Illinois without the use of the differential adjustment in making the rates, would show a difference of 77 cents. If the Holmes & Hollowell

scale were used the difference would be $1.54; if the Mid-
[fol. 2246] land Electric scale were used the difference would be $1.22, and if 81.7 per cent of the Midland Electric scale were used, which 81.7 per cent represents the difference in transportation conditions Illinois Freight Association territory as against Illinois Freight Association territory to Iowa destinations, as illustrated on page 5 of this exhibit, the difference would be 95 cents. Applying 81.7 per cent of the Midland Electric scale as shown on line 5, to the mileage from the Fulton-Peoria district to Beloit, Wisconsin, would produce a rate to Beloit of $1.64 as a reasonable maximum rate. If the rates from Southern Illinois were made 79 cents over this $1.64 as shown on lines 9-12, inclusive, the rate from Southern Illinois would be $2.43, or 3 cents higher than the present rate of $2.40, and a proper and reasonable rate adjustment would prevail.

Under column H, I have shown the ton-mile earnings which would be earned on the basis of the differential shown. The present differential earns ton-mile earnings of 2.66 mills for the 288-mile haul Southern Illinois over Fulton County.

On pages 14, 15 and 16 are shown comparisons of the rate levels from Southern Illinois and Fulton-Peoria origin groups to Beloit, Wisconsin, and to certain other destinations in the so-called compared territory in Wisconsin. On pages 20 and 21 the same comparisons are made with the Wisconsin rate levels, except that the Illinois destination [fol. 2247] of Amboy is used instead of Beloit. On pages 24, 25 and 26 the same comparisons are made, except that the Illinois destination of Dixon is used instead of Beloit. On pages 34, 35 and 36 the same comparisons are made except that the Illinois destination of Rockford is used instead of Beloit. On page 40 a similar comparison is made except that the Illinois destination of Sterling is used instead of Beloit.

I point out these comparisons at this time in order to avoid repetition in explaining pages 20, 21, 24, 25, 26, 34, 35, 36, and 40.

Returning to page 14, I have shown in column C the distance from Southern Illinois origin group to the destinations involved, and the distance from the Fulton-Peoria origin group to the destinations involved when our mileage is used, that is to say, the mileages computed by me and

introduced by me in behalf of Middle States Fuels, Inc., and Northern Illinois Coal Trade Association.

In column D the distances from these two origin groups to the destinations involved are shown as determined by the carriers' mileage computations. In column E are shown the present rates.

In column G is shown the rate which would obtain from Southern Illinois and from Fulton-Peoria to the involved destinations if our mileages were used and the Midland Scale applied.

[fol. 2248] In column H are shown the rates which would apply from Southern Illinois and from Fulton-Peoria to the same destinations if the carriers' mileages were used and the Midland Scale applied.

Under column I is shown the relationship between the present rates from Southern Illinois and Fulton-Peoria to the destinations involved when compared with the rate which would obtain if the Midland Scale were applied to our mileages.

Under column K is shown the relationship between the present rates from Southern Illinois and Fulton-Peoria to the destinations involved when compared with the rate which would obtain if the Midland Scale were applied to the carriers' mileages.

As shown on line 8, the level of the present rates from Southern Illinois to these Wisconsin destinations based on our mileages is 85.5 per cent of the Midland Electric Scale, whereas the Southern Illinois rate level to Beloit, as shown on line 9, is 74.3 per cent of the Midland Electric Scale.

Mr. Stadell: Mr. Examiner, it is just actually impossible to follow any of his testimony.

Mr. Vesey: Will you slow down just a little bit?

Mr. Stadell: You can't possibly even take a glance at the exhibits or hear the testimony, either. Mr. Christiansen is going entirely too fast.

The Witness: The level of rates——

[fol. 2249] Exam. Trezise: Go a little slower, Mr. Christiansen.

The Witness: The level of rates which obtains from Fulton-Peoria to the Wisconsin destinations is, as shown on line 19, 89.7 per cent of the Midland Electric Scale, based on our mileages, whereas the Fulton-Peoria rate level to Beloit is 82.5 per cent of the Midland Scale.

In other words, the Southern Illinois rate level to Beloit is 11.2 percentage points lower than its level of rates to Wisconsin, whereas Fulton-Peoria's rate level to Beloit is only 7.2 percentage points lower than its level of rates to Wisconsin. If Fulton-Peoria's rate to Beloit was based upon the difference in the rate levels which obtain on Southern Illinois shipments to Beloit and to the Wisconsin destinations, Fulton-Peoria's rate to Beloit would be fixed, as shown on line 22, at $1.62, if our mileages are used, and, as shown on line 23, $1.58, if the carriers' mileages are used.

Stated in other words, the application of the rate levels which obtain on Southern Illinois shipments to Wisconsin destinations and to Beloit, Wisconsin, in establishing rates on bituminous coal from Fulton-Peoria to Beloit, Wisconsin, would result in a reduction in the present Fulton-Peoria rate to Beloit of 18 cents a ton if our mileages are used, and 22 cents a ton if the carriers' mileages are used. The establishment of such rates would bring about a rate differential or difference between Fulton-Peoria and Southern Illinois at Beloit of approximately 79 cents a ton, which [fol. 2250] was the rate difference or differential prescribed in the Hardie Announcement promulgated in 1925, which I have already testified about.

Mr. Biaett: I make the same objection and move that it be stricken, Mr. Examiner.

Exam. Trezise: Oh, I think we will let it stand.

The Witness: On page 15 the information shown on page 14 is plotted in chart form using the Midland Scale as the yardstick. The difference in the rate levels as between Fulton-Peoria and Southern Illinois to Beloit, Wisconsin is also converted to actual percentages rather than amounts in percentage points as shown on page 14. The Southern Illinois rate level to Beloit is 13.1 per cent lower than Southern Illinois to Wisconsin, whereas Fulton-Peoria to Beloit, Wisconsin, is only 8.0 per cent lower than Fulton-Peoria to Wisconsin.

On page 16 is shown the same comparison as is shown on page 14, except that the Holmes & Hollowell scale is used as the yardstick instead of the Midland Scale.

On pages 17, 22, 27, 37 and 41 are shown comparisons of the rate levels from Southern Illinois and from Victoria in the Fulton-Peoria origin group to Dixon, Illinois, and Amboy, Illinois, Beloit, Wisconsin, Rockford, Illinois, and Sterling, Illinois, respectively, and to certain destinations

in Wisconsin. The Wisconsin destinations are the same as those used in making the comparisons on pages 14, 20, 24 and 34 of this exhibit. The comparisons at each of the compared points are made in exactly the same manner.

[fol. 2251] As shown on line 23 of page 17, the proper rate from Victoria to Beloit, Wisconsin, is $1.58 per ton, instead of the present rate of $1.80.

As shown on line 23 of page 22, the proper rate from Victoria to Amboy is $1.27 instead of the present rate of $1.50.

As shown on line 23 of page 27, the proper rate from Victoria to Dixon is $1.21, as compared with the present rate of $1.50.

As shown on line 23 of page 37, the proper rate from Victoria to Rockford, Illinois, is $1.34 per ton instead of the present rate of $1.45 per ton, via the C. B. & Q., or $1.50 via the Galesburg & Great Eastern, C. B. & Q., and C.M.St.P.&P.

As shown on line 23 of page 41, the proper rate from Victoria to Sterling, Illinois, is $1.21 per ton instead of the present rate of $1.33 per ton.

On page 18 is shown a comparison of the rate level from Southern Illinois and the Atkinson mine in the Fulton-Peoria origin group to Beloit, Wisconsin, and to the Wisconsin destinations heretofore referred to in the comparisons shown on page 14. The information on page 18 was prepared in exactly the same way as the information shown on page 14 except Atkinson is the origin point instead of Fulton-Peoria. The comparison on page 18 shows that a just and reasonable rate from Atkinson to Beloit, Wisconsin, would be as shown on line 21, $1.59 per ton instead of the present rate of $1.94 per ton, if our mileages are used, [fol. 2252] and if the carriers' mileages are used the proper rate from the Atkinson mine to Beloit, Wisconsin, would be $1.54 per ton instead of the present rate of $1.94 per ton, or a 40-cent per ton reduction.

On page 19 is shown in chart form the same information as appears in the tabulation shown on page 18, and does not need any further explanation.

Exam. Trezise: I think possibly that would be a good place to stop. You can't finish it anyhow this morning, and if there is no objection, we will adjourn until 10:00 o'clock Monday morning.

(At 12:00 o'clock noon, on Saturday, October 2, 1943, adjournment taken to 10:00 o'clock a. m., on Monday, October 4, 1943.)

* * * * * * *

[fol. 2253] By Mr. Vesey:

Q. Mr. Christiansen, I believe you stopped reading from your prepared statement on page 50. Will you proceed on page 51, please.

A. On page 20, as previously explained, is shown a comparison of the rate levels from Southern Illinois and Fulton-Peoria origin groups to Amboy, Illinois, and to certain other destinations in the so-called compared territory in Wisconsin.

The data shown on page 20 is made up in exactly the same fashion as that shown on page 14, except that the compared destination in these instances is Amboy, Illinois. It shows that if the Fulton-Peoria origin group rates to Amboy, Illinois, were related to the Fulton-Peoria rate level to the [fol. 2254] Wisconsin destinations in exactly the same manner as are Southern Illinois rates to Amboy, the Fulton-Peoria rate would be $1.32 per ton instead of $1.50 per ton, and if the suspended rates were put into effect for Southern Illinois and other Illinois origin groups, the Fulton-Peoria origin group would take a rate at Amboy of $1.35 per ton instead of the proposed rate of $1.55 per ton. This information is shown on lines 23 and 24. If the carriers' mileages were used the resultant rate would be $1.42 per ton for the present rate and $1.46 per ton if the proposed suspended rates are considered.

Exam. Trezise: Let me get straight.

By Exam. Trezise:

Q. "Our mileages," you say, are over the shortest tariff routes?

A. Our mileages are over the shortest tariff routes and the carriers' mileages are over the short tariff routes.

Exam. Trezise: Thanks.

The Witness: On page 21 the information shown on page 20 is again shown, except that on this page it is shown in chart form.

Page 22 is explained in connection with pages 17, et cetera, of the exhibit.

On page 23 is shown a comparison of rates and mileages from Fulton-Peoria, Northern Illinois and Southern Illinois districts to Amboy, Illinois, compared with rates and mileages to other destinations. The mileages via both short [fol. 2255] and shortest tariff routes are shown. Present rates only are shown.

For a difference in distance of 178 miles via short tariff route as between Fulton-Peoria and Southern Illinois to Amboy, the difference in rate is 50 cents, whereas from Northern Illinois to Amboy for a difference in distance as between Northern Illinois and Fulton-Peoria of 69 miles the rate difference is 45 cents. In other words, 45 cents for 69 miles and 50 cents for 178 miles. There is something wrong with such an adjustment.

The rate from Fulton-Peoria to Amboy earns 11 mills per ton-mile. The rate from Fulton-Peoria to Clinton for approximately the same distance earns 9.9 mills per ton-mile. From Northern Illinois to Beloit, Wisconsin, the Commission prescribed a rate of $1.40 for 125 miles in 174 ICC 545 as shown on line 6 and from Fulton-Peoria to Linwood, the Commission prescribed $1.25 for 114 miles in 197 ICC 301. On line 8 is shown the Midland Electric Scale for 140 miles, which is $1.75. On line 9 is shown the per cent that the Fulton-Peoria-Clinton rate is of the Midland Electric Scale, which is 76 per cent.

If the rate from Fulton-Peoria to Amboy were made on the basis of the rate from Fulton-Peoria to Clinton it would be $1.33, which is shown on line 10, namely, 76 per cent of $1.75. On page 5 of this exhibit is shown the class rate level in Illinois Freight Association territory as against the class rate level from Fulton-Peoria to Iowa [fol. 2256] destinations, which is 81.7 per cent. If the Fulton-Peoria-Amboy rate were made on the basis of 81.7 per cent of the Midland Electric scale, the rate would be $1.43 as shown on line 12. The difference Southern Illinois over Fulton-Peoria to Clinton, Iowa, is 92 cents for a difference in distance of 240 miles via the short tariff route and 230 miles via the shortest tariff route.

On page 24 is shown a comparison of the rate levels from Southern Illinois and Fulton-Peoria origin groups to Dixon, Illinois, and to certain other destinations in the so-called compared territory in Wisconsin. In this comparison the

Wisconsin destinations are the same destinations as I used in making my comparisons at Beloit, shown on page 14 of this exhibit, and in making my comparisons at Amboy, shown on page 20 of this exhibit. The data shown on page 24 was prepared in exactly the same manner as the data used on pages 14 and 20 which I have previously explained, except that the compared destination is Dixon, Illinois. This page shows on lines 23, 24, 26 and 27 what a proper rate would be to Dixon if Fulton-Peoria to Dixon were accorded the same treatment as is accorded Southern Illinois to Dixon.

On page 25 I have shown exactly the same data as shown on page 24, except that it is shown in chart form.

On page 26 I have shown the same data as shown on page 24, except that in this instance the Holmes and Hallowell scale is used as a yardstick instead of the Midland Electric [fol. 2257] scale which was used in making the study shown on page 24.

Page 27 is taken care of in connection with the testimony with reference to page 17.

On page 28 is a comparison of the rate levels from Southern Illinois and the Atkinson Mine in the Fulton-Peoria group to Dixon, Illinois, and to the Wisconsin destinations which I have used in making the comparisons shown on pages 14, 18, 20 and 24. The tabulation is made the same way as the other rate level comparisons were made.

As shown on line 21, the proper rate from Atkinson on coal moving to Dixon, Illinois, is $1.49 per ton instead of the present rate of $1.75 per ton. This is based on the present tariff route which is longer than the route via C. R. I. & P.-Silvis-C. B. & Q.-Sterling-C. & N. W. No rates are in effect via this latter route.

On pages 29 and 30 I have shown certain rate comparisons between the Fulton-Peoria and Southern Illinois and Northern Illinois origin groups on coal moving to Dixon, Illinois, and certain comparisons between the rates from the Fulton-Peoria and Southern Illinois origin groups on coal moving to Clinton, Iowa, together with computations showing what the Fulton-Peoria rates to Dixon, Illinois, would be if the rate was based upon the Clinton, Iowa rate and the Midland Electric Scale used, and, secondly, what the Fulton-Peoria rate to Dixon would be if the Clinton, Iowa level of rates were used and effect given to the shorter

[fol. 2258] mileage which obtains on hauls to Dixon, Illinois, as compared with hauls to Clinton, Iowa.

On lines 1 to 7, inclusive, on page 29 are shown the Fulton-Peoria, Southern Illinois and Northern Illinois rate comparisons to Dixon, Illinois. On lines 8 to 12, inclusive, are shown the rate comparisons between Fulton-Peoria and Southern Illinois on coal moving to Clinton, Iowa.

Under Column A is shown the present rate; under Column B the short tariff mileage; under Column C the shortest tariff mileage; under Columns D and E the ton-mile earnings in mills which result from use of the short and shortest tariff routes; and under F, G and H the difference over or under Fulton-Peoria in the mileage computed under short tariff and under shortest tariff and in the rates.

For example, on line 2 under Column F the difference in the length of the hauls from Fulton-Peoria and Southern Illinois to Dixon is 191 miles and the difference in the rates from these two origin groups to Dixon is 50 cents per ton. Stated in other words, Southern Illinois at the present time pays 50 cents per ton for the 191-mile longer haul. On the other hand, as shown on line 3, Northern Illinois is 35 miles closer to Dixon than Fulton-Peoria and its rate is 45 cents per ton less than the Fulton-Peoria rate, or, stated in different words, the Fulton-Peoria origin group pays 45 cents per ton for a 35 mile longer haul when its rates are com-
[fol. 2259] pared with the Northern Illinois rates.

Following these comparisons through, it is to be seen that Southern Illinois enjoys an inordinately favorable rate relationship with the Fulton-Peoria origin group, that is to say, it is able to move coal 191 miles for virtually the same rate as is assessed Fulton-Peoria for moving coal 35 miles. As shown on lines 4 and 5, the Fulton-Peoria mileage is 38.8 per cent of the Southern Illinois mileage, but the Fulton-Peoria rate is 75 per cent of the Southern Illinois rate.

On coal moving to Clinton, Iowa, a wider differential obtains between the Fulton-Peoria and Southern Illinois districts, although there is a slightly greater difference in distance than obtains at Dixon. As shown on line 9, the haul from Southern Illinois to Clinton, Iowa, is 240 miles longer than from Fulton-Peoria, and the rate from Southern Illinois is but 92 cents a ton greater. Stated in terms of percentages, the Fulton-Peoria mileage is 35.8 per cent of the Southern Illinois mileage and the Fulton-Peoria rate is 59.1 per cent of the Southern Illinois rate. As shown

on line 12, if the Fulton-Peoria rate to Dixon was set at 59 per cent of the Southern Illinois rate to Dixon, the Fulton-Peoria rate would be $1.18 per ton instead of $1.50 per ton as at present.

As shown on line 16, the Fulton-Peoria rate to Clinton is 76 per cent of the Midland Electric Scale rate. If the Fulton-Peoria-Dixon rate was established at 76 per cent of [fol. 2260] the Midland Electric Scale it would be $1.28 as shown on line 17.

Even if the fact that Dixon is closer to the Fulton-Peoria origin group than is Clinton, Iowa, were discounted, and Fulton-Peoria's rates to Dixon were set at the same rate in effect on coal moving from Fulton-Peoria to Clinton, Fulton-Peoria would receive a substantial reduction in its rate to Dixon, as shown on line 18. The resulting rate would be $1.33 per ton instead of the present rate of $1.50 per ton.

If consideration were given in fixing the rates from the Fulton-Peoria group to Dixon to the better transportation conditions which prevail when this haul is compared with the haul from Fulton-Peoria to Iowa destinations, then as shown on line 19 the Fulton-Peoria-Dixon rate would be $1.37, or 13 cents lower than the present Fulton-Peoria-Dixon rate.

On page 30 I have shown, on lines 2 to 4, inclusive, what the Fulton-Peoria rate to Dixon, Illinois, would be if this rate were based on the Clinton rates and the Midland Electric Scale used to reflect the shorter mileages involved. In other words, the Midland Electric Scale is 7 cents per ton lower for 121 miles than for 134 miles. If this 7 cents were taken off the $1.33 rate applying from Fulton-Peoria to Clinton, the Fulton-Peoria-Dixon rate would be $1.26 as shown on line 4.

On lines 5 to 7 is a comparison of the rates from Fulton-Peoria to Dixon with the rates which the Interstate Commerce Commission prescribed as reasonable maximum rates [fol. 2261] from Fulton-Peoria to Linwood, Iowa and from Northern Illinois to Beloit, Wisconsin for comparable mileages. Reference to the decisions in which these reasonable maximum rates were prescribed is shown at the bottom of the page. The present rate from Fulton-Peoria to Dixon earns 1.2 mills per ton more than the Northern Illinois to Beloit rate earns and 1.4 mills per ton mile more than the Fulton-Peoria to Linwood, Iowa rate earns. If the Fulton-Peoria to Dixon rate were made so as to earn the same earn-

ings per ton mile as the rate from Fulton-Peoria to Linwood, the rate would be 17 cents lower than the present rate, or $1.33.

Page 31 shows the difference or graduation of various rate scales prescribed by the Interstate Commerce Commission for the difference in distance as between Rockford, Illinois, and Janesville, Wisconsin, of approximately 37 miles for the respective mileages from the Fulton-Peoria-Southern Illinois districts to these two destinations.

The average distance is 36.7 miles from Rockford, Illinois, to Janesville, Wisconsin. On lines 8 to 19 is shown the gradation for the difference in distance of 36.7 for hauls between 150 and 190 miles, and for hauls between 370 and 410 miles, one representing the Fulton-Peoria mileages to the destinations of Rockford, Illinois, and Janesville, Wisconsin, and the other representing the Southern Illinois mileage to these two destinations. In every instance it will be noted that the gradation for this haul is greater for the [fol. 2262] mileage from the Fulton-Peoria district, and yet the rates in effect from Fulton-Peoria to Rockford, Illinois, are 50 cents lower than from Fulton-Peoria to Janesville, Wisconsin, as shown on line 20, and the rate from Southern Illinois to Rockford is 69 cents lower than the Southern Illinois rate to Janesville for this same difference for a longer haul.

On lines 22 and 23 is shown the suspended destination differentials or differences, Rockford, Illinois, under Janesville, Wisconsin, from the Fulton-Peoria district and from the Southern Illinois district, which are 35 cents for Fulton-Peoria and 54 cents for Southern Illinois, or the same 19 cents which the Southern Illinois level of rates is lower to Rockford, Illinois, than to Janesville, Wisconsin, when compared with the rates from the Fulton-Peoria district.

Page 32 further illustrates the relationship of Fulton-Peoria versus Southern Illinois to Rockford, Illinois, by showing it in chart form. Instead of using the average mileage of 36.7 miles, we have taken the difference in distance as between Fulton-Peoria to Rockford, Illinois, and Fulton-Peoria to Janesville, Wisconsin, via the short tariff route and via the shortest tariff route, which is 32 miles via short tariff route and 31 miles via shortest tariff route. From Southern Illinois to Rockford, Illinois, as against Southern Illinois to Janesville, Wisconsin, the difference

in distance is 52 miles via short tariff route, and 44 miles [fol. 2263] via shortest tariff route. Fulton-Peoria Rockford, Illinois, differential in rate under Southern Illinois is 50 cents, whereas the Fulton-Peoria Janesville, Wisconsin, rate under Southern Illinois is 69 cents.

On the exhibit I noticed, at least on my copy, on the last column on line 2 it just shows "3". That should read "31."

By Mr. Stadell:

Q. Is that Rockford over Janesville or under Janesville?
A. Rockford under Janesville, shortest tariff.
Q. 31?
A. Should be 31. It reads "3."

On the bottom of the page is shown the normal gradation of various rate scales prescribed by the Interstate Commerce Commission for application on coal. In each instance the normal gradation would result in a Fulton-Peoria differential for Rockford, Illinois, under Janesville, Wisconsin, greater than the Southern Illinois differential for Rockford, Illinois, under Janesville, Wisconsin. For instance, under the 23922 scale the Fulton-Peoria differential would be 20 cents and Southern Illinois 16 cents. Under the Midland Electric Scale the Fulton-Peoria differential would be 26 cents and the Southern Illinois differential 22 cents.

Mr. Wood: Pardon me just a minute. Can you add to the bottom of page 32 the exhibit numbers, or do you know at this time?

Mr. Vesey: We are going to put those all in in a minute. [fol. 2264] Mr. Wood: O. K.

Mr. Vesey: There are several exhibit references there to complete it, and after he has completed his statement we will go through and put them all in.

Mr. Wood: O. K.

The Witness: On page 33 is a table showing the rates, mileages, and the rate and mileage differentials which obtain between the Fulton-Peoria, Southern Illinois and Northern Illinois origin groups at Rockford, Illinois, and the rates, mileages and mileage and rate differentials which obtain between the Fulton-Peoria and Southern Illinois origin groups at other comparable and comparative destinations. The destinations are shown under Column B, the present rates shown under Column C, the mileages via short

tariff and shortest tariff routes are shown under Columns D and E, and the differences in mileages and in rates are shown under Columns F, G and H.

The difference or differential Fulton-Peoria under Southern Illinois at Rockford is only 60 cents whereas to the other destinations, the difference or differential ranges from 67 cents to $1.00 for like differences in distance.

On page 34 is shown a comparison of the rate levels from Southern Illinois and Fulton-Peoria origin groups to Rockford, Illinois, and to certain other destinations in the so-called compared territory in Wisconsin. The Wisconsin destinations shown on page 34 are the same as those shown [fol. 2265] on pages 14, 20 and 24. The data shown on page 34 is the same as that shown on pages 14, 20 and 24 except that the compared point in this instance is Rockford, Illinois. The explanation which I have given with reference to pages 14, 20 and 24 applies to page 34.

On lines 23 to 27 is shown the rates which should prevail at Rockford if proper treatment were accorded Fulton-Peoria.

On page 35 is shown the same data as appears on page 34, except that it is shown in chart form.

On page 36 is shown the same information as appears on page 34, except that the scale used on page 36 is the Holmes and Hallowell Scale, whereas the Midland Electric Scale was used on page 34.

Page 37 is taken care of in connection with the testimony with reference to page 17.

On page 38 is a comparison of the rate levels from Southern Illinois and the Atkinson Mine in the Fulton-Peoria origin group to Rockford, Illinois, and to the previously mentioned Wisconsin destinations. The comparisons shown on page 38 were prepared in exactly the same way as the comparisons shown on pages 14, 18, 20, 24 and 28.

As shown on line 21, the proper rate from the Atkinson Mine to Rockford, Illinois, should be $1.35 per ton instead of the present rate of $1.50 per ton.

On page 39 the same information as shown on page 38 [fol. 2266] is shown in chart form. In connection with page 39, I would like to add that as noted under Column F and under Column H, the level of rates which the carriers propose under Section 13 from Atkinson to Rockford is higher than the interstate level from Atkinson to the Wisconsin destinations, and making the comparison with South-

ern Illinois as shown on Columns B and D; whereas Southern Illinois, they propose rates 15.2 per cent lower if our mileages are used and 13.4 per cent lower than the Wisconsin level if the carriers' mileages are used.

On page 40 is shown a comparison of the rate levels from Southern Illinois and Fulton-Peoria origin groups to Sterling, Illinois, and to certain other destinations in the so-called compared territory in Wisconsin. The destinations used in this exhibit are the same as those previously referred to in my explanation of the data shown on pages 14, 20, 24 and 34. The compilation of the data on page 40 is made up in exactly the same way as the compilations on pages 14, 20, 24 and 34. The compared point used in the comparisons shown on page 40 is Sterling, Illinois, rather than the compared destination referred to on pages 14, 20, 24 and 34.

As shown on lines 23 to 27, inclusive, the establishment of a rate level on coal moving from Fulton-Peoria to Sterling, Illinois, on a comparable basis to the present relationship between the Southern Illinois rates to Sterling and the Southern Illinois rates to the Wisconsin destinations would result in a substantial reduction in the Fulton-Peoria [fol. 2267] rate to Sterling. As shown on line 23, this rate would be $1.27 instead of the present rate of $1.33 if our mileages are used, and a rate of $1.23 or 10 cents below the present rate if the carriers' mileages are used.

Page 41 is explained in connection with the testimony in connection with page 17.

On page 42 is shown a comparison of the rate levels from Southern Illinois and from the Atkinson Mine in the Fulton-Peoria origin group to DeKalb, Illinois, and to certain destinations in Wisconsin. The destinations in Wisconsin which were used for purposes of comparison with DeKalb, Illinois, are the same destinations which I used in making similar comparisons between the rate levels from Southern Illinois and Fulton-Peoria on pages 14, 20, 24, 34 and 40 of this exhibit, with the single exception that the destination Wausau, Wisconsin, was not used, for the reason that there are no rates from Atkinson to Wausau. The same method was used in making the comparisons shown on page 42 as was used in making the comparisons on pages 14, 20, 24, 34 and 40.

As shown on line 21, the establishment of a rate from Atkinson to DeKalb, Illinois, at a level below the Atkinson

rate which would reflect the same difference in rate levels as applies on Southern Illinois shipments to DeKalb, Illinois, and to the Wisconsin destinations, would result in a rate from Atkinson to DeKalb, using our mileages, of $1.22 per ton, as against the present rate of $1.81 per ton.

[fol. 2268] In this connection it should be remembered that the carriers propose a rate of $1.10 per ton on coal moving from Northern Illinois origin group to Forreston, Illinois, a distance of 110 miles. The distance from Atkinson to DeKalb, Illinois, as shown on line 18 under Column D, is 98 miles. Hence, it would seem that if the carriers' proposed rate on Northern Illinois coal moving to Forreston is a just and reasonable rate, a $1.22 per ton rate on coal moving from Atkinson to DeKalb, Illinois, would also be a just and reasonable rate and in consonance with the carriers' own proposal. Furthermore, the carriers have proposed a rate from the Northern Illinois origin group to Dixon, Illinois, of $1.10 for a 120-mile haul and a rate of $1.25 per ton for the 125-mile haul from the Northern Illinois origin group to Freeport, Illinois. Hence it would seem that the establishment of rates from Atkinson to DeKalb on a basis which reflects the present difference in the rate levels which apply on shipments from Southern Illinois to DeKalb and to the Wisconsin destinations would result in a rate which is just and reasonable and which is in consonance with the carriers' proposals in so far as the Southern Illinois origin group is concerned, and in so far as the Northern Illinois origin group is concerned. I can see no reason why the same principles of freight rate making should not be applied in the establishment of rates from the Fulton-Peoria origin group as are applied in the estab-

[fol. 2269] lishment of rates from the Fulton-Peoria origin group as are applied in the establishment of rates for the Southern Illinois and Northern Illinois origin groups.

By Mr. Vesey:

Q. Now, Mr. Christiansen, will you please turn back to page 5 of Exhibit 85 and directing your attention to the starred reference, I will ask you to supply the exhibit numbers.

A. On page 5, the exhibit numbers from which the mileages were taken here are Exhibit No. 77——

Mr. Vesey: Mr. Examiner, shall we make those changes off the record?

Exam. Trezise: Yes, off the record.

(Discussion outside the record.)

By Mr. Vesey:

Q. Have you prepared an exhibit showing a comparison of the average rates and mileages to the suspended points in Illinois versus the average rates and mileages to the compared points in Wisconsin from the various producing districts in Illinois showing the difference in rates as between the two destination territories, and also showing the difference which would prevail based on the Midland Electric Scale?

A. I have.

Q. Will you please explain this exhibit?

A. Exhibit No. 86, identified by code reference mark N-327 in the lower right-hand corner, is a comparison of the difference in rates from each of the origin groups in [fol. 2270] Illinois to the suspended territory and to the compared territory in Wisconsin.

Under Column A is shown the origin groups. Under Columns B and C are shown the average distance and rate to the 12 suspended destinations via short tariff routes, taken from Exhibit No. 3. The rate shown is the suspended rate. Under Columns D and E are shown the average distance and the average present rate to the compared points in Wisconsin via short tariff routes, also taken from Exhibit No. 3. Under Column F is shown the difference in the average distance to the suspended territory under Column B, less the average distance to the compared points shown in Column D. Under Column G is shown the difference in the rate to the suspended points shown in Column C less the rate to the compared points shown in Column E. The difference in distances to the suspended territory is approximately the same at each of the origin groups in Illinois. This difference in distance varies from 76.7 miles to 86.7 miles. However, the difference in rate as between the two territories is less for the short hauls or the nearby groups than it is for the longer hauls. As an illustration, from the Fulton-Peoria district the average rate to Illinois destinations is 62 cents less than the average rate to the Wisconsin destinations.

whereas the Springfield, Centralia, Belleville, DuQuoin and Southern Illinois rates are from 73 cents to 75 cents less to the suspended territory than to the compared territory. [fol. 2271] Under Column H we have shown what the Midland Electric Scale would be to the suspended territory for the suspended points. As an illustration, the Fulton-Peoria district rate shown on line 2 for 159.8 miles would be $1.93 per ton under the Midland Electric Scale.

Under Column J is shown what the rate would be under the Midland Electric Scale for the average distance shown in Column D, which is the average distance for the compared points in Wisconsin. In other words, from the Fulton-Peoria district, on line 2 for the distance of 238.9 miles, the Midland Electric Scale would produce a rate of $2.43.

Under Column K we have shown the difference between the rates in columns H and J produced by use of the Midland Electric Scale for the distances shown in Columns B and D for the various origin groups. The difference in rate for the short haul is 49 cents and 50 cents for the Fulton-Peoria origin group, and as the distance increases this difference decreases. For example, at Springfield, Illinois, it is 47 cents; Centralia, Belleville, DuQuoin and Southern Illinois, it is 33 cents. This produces the normal method of making freight rates. In other words, under the present adjustment, as shown in Column G, the level of rates from the Southern Illinois origin group and the origin groups in Illinois other than Fulton-Peoria is 73 cents to 75 cents a ton lower than the level of rates from the same origin groups to the Wisconsin destinations, whereas the Fulton-Peoria rate is only 62 cents lower to the sus- [fol. 2272] pended points. If the normal method of making freight rates were in effect and a 62-cent rate level difference were proper for Fulton-Peoria to the suspended points, then the origin groups to the south of Fulton-Peoria should have rates about 45 cents a ton lower to the suspended points than to the compared points, instead of 73 cents to 75 cents.

(Exhibit No. 86, Witness Christiansen, received in evidence.)

Q. Have you prepared an exhibit showing certain errors in the carriers' Exhibit No. 11 with reference to the Fulton-Peoria origin group?

A. I have.

Q. Will you explain this exhibit?

A. Exhibit No. 87, identified by code reference mark N-326 in the lower left-hand corner, shows a comparison of the mileages and rates from the Fulton-Peoria origin group to the suspended destinations to ascertain the average mileages and the average suspended rate which the carriers used in their Exhibit No. 11 for Fulton County. Exhibit No. 11 shows that the average mileage is 170.8 miles, whereas the actual average mileage is 163.9 miles, as shown under Column D, line 13. The carriers used 285 points in Fulton County in ascertaining their average mileages whereas Exhibit No. 3 actually shows 297 points in the Fulton County district. The correction of this error would result in a change in the average mileages shown in Exhibit [fol. 2273] No. 11 and would change all the percentages and the comparisons which the carriers have made in that exhibit.

On line 14 I have eliminated Belvidere as one of the destination points in order to show how much one destination affects the average. The average mileage from Fulton County to the suspended points, as shown on line 15, by the elimination of Belvidere would be 156.2 miles, as against the carriers' average of 170.8 and the correct average of 163.9 miles. This shows how the mileages can be juggled by adding or eliminating one destination point. Rates cannot be made on the basis of average mileages to a group of destinations. Each destination must be separately considered and reasonable rates fixed to that destination. As an illustration, the average mileage to Dixon is 123 miles and the present rate is $1.50. The average mileage to Belvidere is 243.8 miles and the present rate is also $1.50. The Dixon rate might well be unjust and unreasonable and the Belvidere rate be just and reasonable, but, by averaging the two, one might contend that the Dixon rate was also just and reasonable, which obviously is not the fact.

On the bottom half of the exhibit is shown a new average of mileages from the Fulton-Peoria origin group, using the going rate as a basis for ascertaining the mileages.

Line 29 shows that the average is 159 miles. Under Columns F and G the average rates at the present time are shown to be 75.5 per cent of the Holmes and Hallowell Scale [fol. 2274] and the suspended rate is shown as 79.0 per cent of the Holmes and Hallowell Scale. This is an entirely different picture from that shown in the Carriers' Exhibit No. 11.

(Exhibit No. 87, Witness Christiansen, received in evidence.)

Q. Have you prepared an exhibit from the carriers' Exhibit 11 showing the percentages of the Holmes and Hallowell Scale to the suspended points and the compared points?

A. I have.

Q. Will you please explain this exhibit?

A. Exhibit No. 88, identified by reference mark N-330 in the lower right-hand corner is a re-copy of Exhibit No. 11, eliminating some of the detail shown on the Carriers' Exhibit 11 and adding two columns showing the average percentage that the suspended rates are lower than the average percentage of the compared rates. The origin groups are shown in column 1, the average distance is shown in Column 2, which are the distances shown in Exhibit No. 11, in Column 5, except that from the Fulton-Peoria district a correction has been made on account of the error the carriers made in calculating the average distance from the Fulton County district. The average suspended rate is shown in Column 3; the Holmes and Hallowell Scale, Column 4; the average per cent the suspended rate is of the Holmes and Hallowell Scale rate Column 5. The same information is shown in Columns 6 to 12, inclusive, for the representative [fol. 2275] compared points. In Column 13 is shown the difference in the level of rates, suspended versus compared points, on lump coal, and in Column 14 the difference the suspended rate is lower than the compared rate on fine coal, except where a plus sign is shown which indicates that the level to the suspended territory is higher than the level to the compared territory by the percentage shown after the plus sign.

(Exhibit No. 88, Witness Christiansen, received in evidence.)

From Atkinson, Illinois, to the suspended points, the carriers propose a level of rates on both lump and fine coal which is 5.1 per cent higher than the interstate level, as measured by the Holmes and Hallowell Scale. In other words, the carriers under Section 13, propose to make the intrastate level of rates higher than the interstate level of rates. From the Fulton County district, the level of rates to the suspended points is 76.5 per cent of the Holmes and Hallowell Scale whereas the level of rates to the compared

points is 79.6 per cent on lump coal and 77.9 per cent on fine coal. The difference in the two levels is 3.1 per cent on lump coal and 1.4 per cent on fine coal. In other words, the rate level proposed by the carriers from Fulton County to the suspended points is lower than the interstate level of the compared points by 3.1 per cent on lump coal and 1.4 per cent on fine coal. However, from the Southern Illinois [fol. 2276] district, the level of rates to the suspended points proposed by the carriers is lower than the interstate level to the compared points by 8.0 per cent on lump coal and 6.6 per cent on fine coal. Proposals, similar to the Southern Illinois proposal, are made by the carriers from some of the Indiana groups. Just why the Fulton County rate level should be only 3.1 per cent lower than the interstate level on lump coal and 1.4 per cent lower than the interstate level on fine coal and the Southern Illinois rate level should be .8 per cent lower than the interstate level on lump coal and 6.6 per cent lower than the interstate level on fine coal, is beyond our comprehension.

Before the carriers' request for relief is considered, the Fulton County rate level should be adjusted and equalized with the Southern Illinois rate level—otherwise a discriminatory differential adjustment will have been recognized and, in effect, perpetuated by the Commission.

Q. Mr. Christiansen, certain of the witnesses who have preceded you on the stand, and in particular, Mr. Nelson, of the C. B. & Q., and Mr. Kuhls, of the Milwaukee Railroad, challenged the validity of the proposition that, in the establishing of freight rate differentials or differences to compensate for differences in distance, the rate difference or differential should increase as the length of the haul diminishes. Have you made a study of various freight rates for the purpose of determining the facts with respect to this proposition?

[fol. 2277] A. Yes.

Q. Have you prepared an exhibit showing the results of your study?

A. I have.

Q. Will you please refer to that Exhibit No. 89, and explain it?

A. Exhibit 89, which bears the code reference mark N-328 in the lower left-hand corner shows the results of the study which I made with respect to variations in rate differences

or differentials as the length of the haul from the compared origin groups varied.

On page 1 of the exhibit is shown a map of the State of Illinois on which are located certain key towns in so far as the consumption of coal is concerned, and in parentheses is shown for such towns the rate differential or difference between the Southern Illinois freight rate on coal and the West Kentucky freight rate on coal. An examination of the map shows that in Wisconsin, Southern Illinois has a freight rate differential under West Kentucky of 35 cents per ton, which differential also obtains as we move south down to Effingham. As we move closer to the origin groups the freight rate differential or difference increases. It is 44 cents at Mt. Olive and, proceeding toward the Southern Illinois mines with the shorter haul, it is 47½ cents at Mt. Vernon, and when we got down to Benton, Illinois, which is [fol. 2278]-virtually in the Southern Illinois field, it varies from $1.14 to $1.40, the wider differential applying to the nearer mines.

By Mr. Zoll:

Q. What is the differential at St. Louis?

A. 47½, I believe; I don't know.

Mr. Zoll: I just wondered. It wasn't shown on here.

The Witness: On page 2 supporting data for the map on page 1 is shown.

On page 3 is shown a map for portions of the States of Arkansas, Oklahoma, Missouri, Kansas, Nebraska and Iowa. The map was prepared so as to show the Rich Hill origin group, which is located on the State line between Missouri and Kansas, and the Pittsburg origin group, also located on the Missouri-Kansas line to the south of the Rich Hill origin group, and the Spadra origin group further to the south in Arkansas. It portrays the rail lines serving these groups and Kansas City, Missouri, and I have shown thereon the freight rate differentials or differences which obtain between these groups. The rate difference or differentials for the Rich Hill origin group, when compared with the Pittsburg origin group, are enclosed in a circle, and the rate differences or differentials between the Rich Hill origin group and the Spadra origin group are enclosed in squares.

This map shows that the rate differential between the Rich Hill origin group and the Pittsburg origin group increases substantially as the length of the haul decreases. [fol. 2279] For example, at Kansas City Rich Hill has a freight rate differential under Pittsburg of 20 cents per ton, which increases to 45 cents per ton at the nearby point of Schell City. Likewise, when Rich Hill's rates are compared with the Spadra rates the rate differential increases as the length of the haul decreases, and here we have for example on lump coal, a differential at Kansas City of $1.45, at Harrisonville of $1.80, and at Adrian, the nearest point, of $2.00. The detail for the figures shown on this map appears on page 4 of the exhibit.

I wish also to point out that on page 3 I have shown the rate differential between the Rich Hill origin group and the Spadra origin group which obtains at Omaha, Nebraska. This differential is shown for the purpose of illustrating the fact that outside the so-called short-haul destinations freight rate differentials normally are blocked, that is to say, the differential is uniform over fairly large sections, whereas in so-called short haul territory rate differentials vary substantially and are fixed on the basis of the fundamental freight rate principle that differentials or differences in rates in short haul territory increase as the length of the haul decreases or diminishes.

On page 5 of Exhibit 89, is shown a map of the States of Indiana, Illinois, Iowa, Minnesota and Wisconsin, on which I have plotted in red the freight rate differential which obtains at the present time between Brazil-Clinton origin [fol. 2280] group and the Southern Illinois origin group, and in blue figures I have shown the rate differential which obtains at the present time between the Linton-Sullivan origin group and the Brazil-Clinton origin group. What I have said above in discussing the differentials which obtain between Southern Illinois and West Kentucky and the Rich Hill origin group when compared with the Pittsburg and Spadra origin groups, also applies to these comparisons, the only exception being in the comparison of Brazil-Clinton with Southern Illinois at Rockford, Illinois, and this exception is the subject of strenuous objection on the part of the Indiana operators in this proceeding. I have not shown separately the details for this map, as they are already of record in this proceeding.

On page 6 of the exhibit is shown the same map as appears on page 5, but in this case the red figures show the freight rate differential or difference which obtains at the present time between Springfield origin group and the Southern Illinois origin group. These figures show that on coal moving from the Springfield and Southern Illinois origin groups to the north of Springfield, the freight rate differential increases from 30 cents per ton to 91 cents per ton as the length of the haul decreases. It shows also that the freight rate differential is fairly constant outside short-haul territory and that it varies substantially within the short-haul territory, but always increasing as the length [fol. 2281] of the haul decreases. It also shows that on hauls to the northwest and west of the Springfield origin group the principle which I have just been illustrating applies with full force. For example, the differential or difference increases from 20 cents to 56 cents as the length of the hauls decrease.

(Exhibit No. 89, Witness Christiansen, received in evidence.)

By Mr. Vesey:

Q. Mr. Christiansen, as I understand your testimony, the one exception to the principle which you have just been illustrating exists in the case of the Fulton-Peoria short-haul rates to the affected territory, is that right?

A. That is true. It is the only exception. This fundamental principle in freight rate making has been applied by both the carriers and the Interstate Commerce Commission in the case of the Fulton-Peoria rates to the territory outside of the affected territory in this proceeding. For example, in interior Iowa the freight rate differential between Fulton-Peoria and Southern Illinois is 70 cents, and as the length of the hauls decreases and we approach the Fulton-Peoria origin group the freight rate differentials or differences increase substantially. At Dubuque, Iowa, for ex- [fol. 2282] ample, the rate differential is 70 cents, and coming toward the Fulton-Peoria origin group it is 75 cents at Savanna, 92 cents at Clinton, $1.00 at Davenport, and $1.20 at Galesburg. The complaint of the Fulton-Peoria producers in this proceeding would be answered if this fundamental principle in freight rate making were applied in the affected territory in this proceeding.

Q. Mr. Christiansen, does this so-called fundamental principle about which you have just been testifying apply regardless of whether or not the rates in the short-haul territory are based on mileage scales or are on a point to point basis?

A. It does, without exception, except in the case of the Fulton-Peoria rates to the affected territory.

Mr. Vesey: Can we take a recess for about two minutes?

Exam. Trezise: Very well, we will have a recess.

Exam. Trezise: All right, gentlemen, when you are ready we will continue.

By Mr. Vesey:

Q. Mr. Christiansen, will you please refer to Exhibit No. 90 and identify that exhibit, please.

A. Exhibit No. 90 is identified by code reference mark N-331 in the lower left-hand corner and is based on Mr. Rozene's Exhibit No. 37; showing the level of rates in the Holmes and Hallowell territory, based upon the Holmes and Hallowell Scale, by using the short tariff routes as a basis for ascertaining what that level is.

(Exhibit 90, Witness Christiansen, received in evidence.)

[fol. 2283] Q. Now, I notice that in Exhibit 90 there is a blank space for exhibit reference mark. Will you give us the exhibit number?

A. 37.

Q. 37 or 27?

A. 37.

By Exam. Trezise:

Q. Did I understand you to say short tariff route?

A. Short tariff route, yes.

By Mr. Vesey:

Q. Now, will you please explain your Exhibit No. 90?

A. My exhibit No. 90 shows the level of rates from the Lake Superior docks to Minnesota destinations, which is 92.8 per cent of the Holmes and Hallowell scale on lump coal and 87.4 per cent of the Holmes and Hallowell scale on fine coal, with an average of 90.1 per cent for both lump

and fine. It shows the percentages of the Holmes and Hallowell scale to South Dakota and Iowa and the average for Minnesota, South Dakota and Iowa.

On the bottom part of the exhibit is shown the present rate from Fulton-Peoria district to Beloit, Wisconsin, showing the miles, what the Holmes and Hallowell scale would be and the per cent that the present rate is of the Holmes and Hallowell scale, which is 87 per cent on all sizes. And on the last, bottom line is shown the per cent that the Fulton-Peoria to Beloit rate is of the level of the [fol. 2284] rates from the Head of the Lakes to Minnesota, Iowa and South Dakota.

On lump coal the present Beloit rate is 95.6 per cent of the level of rates in the Holmes and Hallowell territory. On fine coal the Fulton-Peoria Beloit rates are 100.1 per cent of the level of rates applying in the Head of the Lakes territory. The average is 97.8 per cent.

Q. Now, Mr. Christiansen, when you have referred to the Holmes and Hallowell scale, not only in your Exhibit 90 but in all other exhibits, have you referred to that scale as increased by the increases in Ex Parte 115?

A. As increased by the increases authorized in Ex Parte 115 for application in this Northwest territory; in other words, 15 cents a ton increase.

Q. Now, was that the actual increase that took place under Ex Parte 115?

A. No, the actual increase was 7½ cents a ton in the Holmes and Hallowell territory.

Q. Now, if you had shown in your use of the Holmes and Hallowell scale the actual increase of 7½ cents, what effect, if any, would that have had upon your percentage figures?

A. It would show that the present rates and the suspended rates in all of these exhibits are a greater per cent of the actual Holmes and Hallowell scale than is shown on the exhibits.

Q. In other words, for illustrative purposes, if your exhibits show, in relating Illinois rates, let us say, [fol. 2285] regardless of origin group to Holmes and Hallowell scale to be, say 87 per cent, by making a proper correction to show the scale as actually increased in 115, that per cent would be greater?

A. Would be close to 100 per cent.

Q. Well, whatever the situation would be. Now, will you please refer to your exhibits——

By Exam. Trezise:

Q. Now, before you get away from that, I am unable to conceive of the answer that you made that these distances of Rozene were figured over the short tariff routes. I don't know how you would figure them. What in the world is that from the Head of the Lakes, the short tariff route from the Head of the Lakes? What does that mean if it doesn't mean—I thought it meant the shortest tariff routes but you say no, it isn't.

A. The short tariff—I presume the short tariff and the shortest tariff would be the same from the Head of the Lakes, inasmuch as there is only one origin point that is used, and that is Duluth. Maybe I am wrong in that; whatever way that Rozene's Exhibit No. 37 was figured.

By Mr. Stadell:

Q. You don't quite mean there would be only one origin. What you meant, there would be one origin at each of the docks. For example, Lake Superior would have one or more origins, Duluth——

A. That is right.

Q. I mean Superior, Wisconsin, would have more than one origin?

[fol. 2286] A. That is right.

By Exam. Trezise:

Q. It still would be the shortest tariff route, even if you figured it that way. Then how do you get this word "short" tariff route? Is that to confuse the Examiner or the Commission? I don't know. It is the shortest, isn't it?

A. It would be the shortest tariff routes.

Q. Yes, I think you meant the shortest and I think Mr. Rozene meant the shortest and not the short.

By Mr. Vesey:

Q. In other words, you used the term "short tariff routes" in respect to Holmes and Hallowell territory on the assumption, as you have just explained it, in which you assumed that the short and the shortest are the same?

A. That is correct.

Q. But actually the route used is the shortest tariff route?
A. Yes, that is right.

By Mr. Kaylor:

Q. Before you leave Exhibit 90, what is to be filled in on that blank, "See exhibit — for detail"?
A. 37.

Mr. Vesey: 37.
The Witness: 37. I might add that the bulk of the coal moving from the Fulton-Peoria district to Beloit, Wisconsin, is fine coal.

By Mr. Vesey:

Q. Now, will you please refer to Exhibit No. 91 and identify and explain that exhibit.
[fols. 2287-2372] A. Exhibit No. 91, identified by code reference mark S-1319 in the lower left-hand corner, shows the mileages from the Southern Illinois District to Portage and Wausau, Wisconsin. These two destinations were not included in Southern Illinois Exhibit No. 27, and inasmuch as we have used Wausau and Portage in some of our comparisons, it was necessary to put in these mileages, which were figured by the Illinois Coal Traffic Bureau.

(Exhibit No. 91, Witness Christiansen, received in evidence.)

Q. Are they via the short or the shortest tariff routes?
A. These are via the short tariff routes, and also as shown on lines 79, 80 and 81 via the shortest tariff routes. Both are shown on the exhibit. The route numbers are the same route numbers shown in Southern Illinois Exhibit No. 27.

By Mr. Zoll:

Q. Would that change any of the numbers that you inserted at various places in Exhibit 85?
A. Wherever Wausau is shown, the mileages are from Exhibit 91.

Mr. Vesey: You may cross-examine.

* * * * * * *

[fol. 2373] Exam. Trezise: Proceed, Mr. Cardy.

A. J. CHRISTIANSEN, resumed:

Direct examination.

By Mr. Cardy:

Q. Mr. Christiansen, do you know where the Medusa Portland cement plant is located?

A. Yes, sir.

Q. On what line of railroad?

[fol. 2374] A. C. & N. W. at Dixon, Illinois.

Q. And do you know what other cement plants are located near Dixon?

A. The nearest plant to Dixon is the one located at Linwood, Iowa, which is the Dewey Portland Cement Company; and there are several plants located in the LaSalle district.

Q. Do you know how many are located in the LaSalle district?

A. Three, I believe.

Q. Three?

A. I believe so.

Q. Do you know whether or not for a good many years and at the present time that the plants in the LaSalle district and the Dixon plant take the same rate?

A. They do from Southern Illinois.

Q. Yes. Would you say that for rate making purposes, the cement plants in the LaSalle, you might say the Oglesby district—which I understand is a proper name—have been grouped for rate making purposes?

Mr. Biaett: You mean on cement?

Mr. Cardy: No, on coals from Southern Illinois.

The Witness: Well, the rate to LaSalle and Oglesby and the rate to Dixon from Southern Illinois have been the same, yes.

By Mr. Cardy:

Q. Is it contemplated to increase the rates from Southern [fol. 2375] Illinois to any plants other than the plant at Dixon in this proceeding, if you know?

A. You mean to any cement plant?

Q. Yes.

A. No, it is not.

Mr. Cardy: I believe that is all. I might state that I will probably have some additional testimony on the Dixon, some additional rate comparisons so far as the rate from Fulton-Peoria to Dixon is concerned, if and when Mr. Cole gets here.

Exam. Trezise: Very well.

Mr. Cardy: That is all I have at this time.

Exam. Trezise: Cross examine.

Mr. Wilkinson: May I ask just one or two questions; two questions:

Cross examination.

By Mr. Wilkinson:

Q. At page 11 of your prepared statement, Mr. Christiansen, you describe what you mean by a going rate as the lowest of several rates from a district.

A. That is correct.

Q. Now, it sometimes happens, does it not, that traffic does move on the rates that are higher than the lowest rate from a district?

A. That could happen. I don't know whether it actually does or not.

Q. But you have stated that what you refer to is the one that would move the business if any were to move?

[fol. 2376] A. That is correct.

Q. Now, that isn't universally true, is it?

A. Well, I know of no instance in the Fulton County district, at least, where business would move via the route that had a higher rate, unless someone made a movement——

Q. Suppose there were two mines in the district that had different rates.

A. The one with the higher rate wouldn't sell the coal.

Q. That is, you wouldn't expect it to sell the coal?

A. That is correct.

Exam. Trezise: And you are speaking of Fulton-Peoria group alone, now?

The Witness: That is correct.
Exam. Trezise: All right.

By Mr. Wilkinson:

Q. Now, on page 29 of your prepared statement, speaking of the so-called 23922 scale, you stated that it was prescribed for application over the shortest route over which carload traffic could move without transfer of lading. Then you say, "Any comparisons with this scale must be made by using the mileages via short-circuit routes rather than mileages via short tariff or shortest tariff routes." Do you mean by that that any comparisons for the purpose of determining the reasonableness of a rate should be worked out on this short-circuit route, or did you mean that the 23922 scale could not be used as a common denominator to [fols. 2377-2379] compare two rates, using either the shortest tariff route distance or the short tariff route distance; just using the scale as a common denominator?

A. Using the scale as a common denominator or comparing the level of rates in a particular territory with the level of rates in the territory where the 23922 scale was used, you would have to use the same method of calculating the mileages. If you use it merely for a yardstick, then it wouldn't make so much difference.

Q. That is what I mean when I say using it as a common denominator.

A. In that case, a comparison would be made by using the short tariff or shortest tariff route.

Q. Yes.

A. If you used the same method of mileage in comparing the two points, but you were comparing—in other words, if you use the short tariff route, use the short tariff route on both of them; if you use the shortest tariff route, use the shortest tariff route on both of them.

[fol. 2380] Exam. Trezise: May I ask Mr. Scott one or two questions before he leaves?

Mr. Wilkinson: Sure.

Exam. Trezise: Gentlemen, I wish to announce that Attorney General Barrett has authorized the excusing of all witnesses that have been held for cross examination, and in so far as he is concerned, they may be excused.

HAROLD V. SCOTT, recalled:

Direct examination.

By Exam. Trezise:

Q. Well, Mr. Scott, this group relationship between Illinois and Indiana, particularly, as well as Western Kentucky, has been a matter of controversy for a long time. That is correct, to your knowledge, is it?

A. Yes, sir.

Q. Would not some modification of the rates in the instances where Indiana rates from Boonville, for example, are lower to a given destination, if that could be corrected, wouldn't that tend to cause this continued controversy from year to year to more or less terminate?

A. You mean by that that Boonville being lower than some other particular group?

Q. Yes.

A. No, it would not. Our relationship between our four Indiana groups is of utmost importance to us and has been [fol. 2381] in effect for a long time to most of this destination territory and to this Northern Illinois destination territory, and it would not, in our opinion, straighten this matter out, because the Indiana mines—it would disrupt the relationship between the Indiana groups themselves as well as between Southern Illinois or the Illinois groups on the one hand and the Indiana groups on the other.

Q. Do you think that this competitive situation between the origin groups is so important as a principle that distance should be ignored to the extent that lower rates for greater distances should apply from Indiana than from Illinois?

A. I think in any group adjustment of this kind, Mr. Examiner, when you take one group out of one group and compare it with another group in a large group adjustment of this kind, you are bound to find those instances, and where those instances exist, those differences in distances exist, they should not be controlling in deciding the rates.

Q. What would you say as to fixing rates on a prescribed basis of relationship, as was attempted in the Midland Elec-

tric Case? That is, for example, to avoid higher rates from one group for a less distance than apply from another group for a longer distance.

A. I don't think the Midland Electric formula could be applied in an adjustment of this kind. We have our four Indiana groups which were not involved in the Midland [fol. 2382] Electric Case. Those four Indiana groups are related to each other there, and I do not believe that the relationship should be changed.

I do believe that the relationship, where it has been changed, should be restored between those four Indiana groups, and the fact that the distance from the Boonville group versus some of the other Illinois groups might vary a little should not be justification for changing the group relationship which should exist and does exist between certain points as to the Indiana groups themselves.

We cannot overlook the fact that those four Indiana groups are related one to each other; that I represent the majority of the operators, all the large operators in those four groups, and I am speaking for them when I say that we are satisfied with that standard differential relationship between those groups. To my knowledge, there is not one operator that objects to it. We are satisfied with it, and are not asking any change, either the Brazil-Clinton or the Linton-Sullivan operators on the — hand, or the other two groups on the other.

Q. What difference does it make whether you call one group a base group and another group a differential? You mentioned "base group" several times with emphasis.

I have this in mind, exactly. If the average distance from one group be the same as from another, would you say that the rate to a given point should be higher from one than from the other, because you call one a base group and [fol. 2383] the other a differential group, provided the transportation conditions are similar from both groups?

A. No, I wouldn't say the mere fact that one is called a base group and the other is called a base group would have any effect on it.

Mr. Stadell: Differential group, you mean.

The Witness: We have, however, in all of these adjustments, recognized a so-called base group from which the rates are made and rates on some sort of a scale and rates to the other groups definitely related to the base group.

In most of these cases the base group has been Illinois. Our recognized and so-called base group in Indiana has been the Brazil-Clinton group with Southern Illinois, or, if you wish, Brazil-Clinton with Springfield; but we have recognized Southern Illinois——

Exam. Trezise: Just a minute, Mr. Scott, it seems that you are wanted on the telephone.

(Short interruption.)

The Witness: Where did I leave off?

(Record read.)

The Witness: I think I had better start that over. May I have the Examiner's question, if you don't mind, please?

(Question read.)

The Witness: On the assumption, or the admission that transportation charges are the same from Illinois and Indi-
[fol. 2384] ana to this destination territory, I think the difference between a base group and a group that may be differentially related to another group is this: that no one in this proceeding would advocate making rates from all the groups on a distance basis. Therefore you must, of necessity, pick out a base group and you must relate the rates from the other groups to that base group.

Now, if you were, for example, to pick out—it has been talked about in the testimony in this case—Southern Illinois and Boonville, and were to make rates from Boonville with relationship to the rates from Southern Illinois, based on the fact that the differential may be comparable, then you would be definitely ignoring the relationship that exists between the Boonville group on the one hand and the three groups in Indiana, Princeton-Ayrshire, Linton-Sullivan and Boonville to the north. I do not think that in any adjustment of this kind that you can handle this thing piecemeal; it must be looked on as a whole. All origin groups must be taken into consideration in arriving at the rates from any one group.

By Exam. Trezise:

Q. So therefore your conclusion is that by virtue of this sacredness of the origin groups in Indiana, you would continue the perpetual situation as shown in your Exhibit 23, on page 6, where the rate to Forreston, Illinois, from Southern Illinois is 353 miles, at present the rate of $2.10, and 5 cents less than that from Boonville for 431 miles, [fol. 2385] a greater distance by 78 miles. That is what you say should be done and continued?

A. No, sir. I say that differential should be made 10 cents under Southern Illinois. I say that that is a differential applying to the territory north of Northern Illinois, and that Forreston should not be increased out here on the Northern Illinois group, be singled out, any more than should the Northern Illinois be singled out from the entire Northwest, in what is known as destination territory A.

You are taking one group, Southern Illinois, comparing with another group, Boonville, comparing the distances to one destination, Forreston; and in an adjustment of this kind, rates, in my opinion, cannot be made that way. You must take the entire destination territory, consider the entire origin groups, each and every one of them as a whole, and consider them.

Q. That was very enlightening, but if I would go out and pick some more points up there, I would find the distances to the Northwest territory were 98 miles greater from Boonville rather than 78 miles.

A. Well, then, Mr. Examiner, I would add this to what I have already said, that the Commission, the Interstate Commerce Commission, before whom this proceeding is, have themselves said that relationships, group relationships should be maintained until there is good and sufficient reason for changing them.

[fol. 2386] They have further said that distance is not a primary factor in a group adjustment of this kind, such as we have before us here.

Taking those two statements of the Interstate Commerce Commission into consideration, there should not be any change in the differential adjustment, other than the standard differentials here in existence today, and the standard differential that has been disrupted in 1930 by reduction of the rates from Illinois groups should be restored.

Q. The Commission has said just what you have said and it was applied, as they have said, distance is ignored; but do you know of any other instance where the distances from one whole group having a greater distance is less than a nearer group, the whole of a nearer group? Do you think the Commission had that particular thing in mind?

A. I think I could, if I looked over the adjustments, I think I could find that.

Q. All right. Now, you do think that is true. You think you could find such a proposition as that, where the whole group distances, the average is less, but the rate is greater than from another group. You think you could find that.

Now, if you could find that, you also quote another statement there that distance is ignored. Now, you mentioned that it was ignored——

A. Not ignored. I used the term, please, that it was not a [fol. 2387] primary factor.

Q. All right, we will take that back; not ignored. I asked you, though, a while ago, do you think that the competitive situation between the origin groups in Indiana is so important as a principle that distance should be ignored to such an extent that you could apply lower rates for greater distances from Indiana than from any groups, whether it is Southern Illinois or any other groups, with higher rates for shorter distances from Illinois, and you said yes. You would do that?

A. I would do that, because there is a definite——

Q. And it is so important. Then isn't that a question of ignoring distance for competitive reasons?

A. No, sir. I pointed it out this way. We take distance into consideration and give it its proper place in considering this adjustment, but its proper place is not the head of the list. You would take Southern Illinois, which is, as you have stated, Mr. Examiner, as the comparable distance, or possibly a shorter distance——

Q. Well, it has a shorter distance.

A. To some destinations, all right.

Q. To certain destinations and to that territory. I will go with you; to that territory. I won't pick out one point.

A. There are a lot of destinations in there where the distance is comparable, where it might be slightly less. Marengo might be.

[fol. 2388] Q. What you are talking about is that if we took all of these points in Northern Illinois and put them together, that we would find that the distances from Boonville would be sufficiently less than from Southern Illinois?

A. No.

Q. To the same group of destinations up here——

A. No, sir.

By Mr. Wilkinson:

Q. Well, wouldn't you find this, Mr. Scott, and isn't this part of the consideration, that via the two carriers that serve Princeton, and Boonville as related to Princeton, you have got a relationship there; then Boonville came in, Boonville itself and Southern Illinois, isn't that the way that relationship grew up?

A. That is right. That is what I have been trying to explain. In other words, to make rates between Southern Illinois on the one hand, Boonville on the other, you would ignore—to do that you would ignore the relationship that exists between the Indiana groups themselves.

Further, I would like to point out, Mr. Examiner, in giving consideration to distances from the Boonville district, it has been a matter of record in this case that the Southern Railway, for its own operating convenience, elects to haul the traffic via Huntingburg, which is a greater distance than it normally should haul it via Evansville, and that some consideration should be given to that, that the carriers [fol. 2389] for their own convenience haul it that way.

By Exam. Trezise:

Q. Do we not have the same sort of a situation where the average distance—I don't mean to one point, I will take all the points and I am trying to get your help on that. Isn't it a fact that from the Princeton-Ayrshire group that we have to Northern Illinois, the points here, if we put them all together, we have a greater distance from the Princeton-Ayrshire group with a less rate than from Southern Illinois or from the Illinois groups?

A. I think I had better get my exhibits out, instead of using Southern Illinois.

Q. Well, I don't want to go into that. I am groping around to try to find some solution that will help you gentlemen out here.

Now, if you don't want this thing solved, why, that's another proposition. I would be glad to help you. I am only giving you my thoughts on it and asking you some questions to see if you could agree, by some little adjustment here—it may not be much—that we could arrive at something; that nobody seems to be satisfied, even the railroads. They say they are dissatisfied with the rates. And in that state of affairs, it might be possible for some people to give a little and others to take a little and reach a logical adjustment where, for longer distances as ordinarily, the rate is higher than for shorter distances.

A. I still object to that, Mr. Examiner. I would like to [fol. 2390] point this out, that the Southern Railway testified here in this proceedings—who serve the Boonville group—that they were satisfied with the standard adjustment, that they had refused to increase their rates from the Boonville group to Beloit, Wisconsin, because the rates from Southern Illinois were not increased; so that the origin carrier in the Boonville group is not dissatisfied with the standard adjustment.

I do not think that consideration should be given to the Princeton-Ayrshire group or the Boonville group on the one hand, and Southern Illinois on the other and arrive at rates on those bases, because that would totally disregard our relationship between the Indiana groups. Just as you term it would be doing something there, you would be creating chaos in the Indiana fields themselves, so you would not be settling anything.

Q. So that this chaos that would be created in the Indiana field would be brought about by regarding distances to a greater extent by applying a somewhat—probably not a higher rate at all. If you include Boonville with the Princeton-Ayrshire group, maybe the whole group might have even an advantageous rate in comparison, but it would be on a distance basis.

I suggest those things, hoping I might fulfill my boy scout duty for today.

Mr. Biaett: May I ask Mr. Scott—had you finished?

Exam. Trezise: I think he wants to say something, and [fol. 2391] we had better let him——

By Exam. Trezise:

Q. Have you something to say to that?

A. Yes, sir, Mr. Examiner.

Exam. Trezise: Very well.

The Witness: I do not believe that the Interstate Commerce Commission, the railroads or any other body should make distance a primary factor in arriving at the rates from these groups. In my opinion to do so, to change the relationship from the standard relationship to anything else, or not to restore the relationship that prior existed to this destination territory where it has been disrupted by the 1930 reductions, would be harmful to the Boonville group or the Princeton-Ayrshire group, harmful to the extent that they would——

Mr. Stadell: Now, I object to the speech that the witness is making. He has previously testified here that he doesn't know anything about the qualities of the coals produced by these mines in these various groups, that he doesn't know anything about the cost of production, he doesn't know anything about the selling prices, and his testimony that he is trying to give here is entirely incompetent. He doesn't know anything about the factors on which the testimony has to be based. I object to it.

Exam. Trezise: Let's pass that with this word: that every suggestion that the Examiner has made here, each and all of them, I think you do not agree with them, is that correct, [fol. 2392] and let me point out what they were—and you do not agree with any one of them, that that would be the solution.

The first one was that if we adjusted the rates from Indiana and Illinois, or modified them in instances where the Indiana rates from Boonville, for example—only for example—are lower to a given destination or destination territory, I will say, than they are from Illinois for shorter hauls, you say that would not tend to curtail these annual controversies between Illinois and Indiana but would disrupt the Indiana groups and cause chaos there.

By Exam. Trezise:

Q. Is that substantially correct?

A. Yes, sir. To cure Illinois you will kill Indiana.

Q. And second, you say that it would not tend to correct the situation that we have here and possibly have had for the last eight or ten years by fixing rates on a prescribed basis, as was attempted in the Midland Electric Case, avoiding higher rates from one group for a less distance than from another group for a longer distance; and you say no, that shouldn't be done, is that right?

A. That is giving too much consideration, in fact that is giving all the consideration to distance alone.

Q. Consideration to distance shouldn't be given in fixing differentials?

A. Not alone, Mr. Examiner.

Q. Well, at all; at all. Any consideration?

[fol. 2393] A. I am sorry, but that last formula you gave me takes into consideration distance only.

Q. Yes, distance. When one group is farther away than the other, you say that should be ignored and the farther away group should be moved nearer because of competitive conditions?

A. Mr. Examiner, may I, sir, please, point out that in Indiana we have our adjustment just that way. As you go further away, our differentials increase, Brazil-Clinton the base, Linton-Sullivan 10 cents over standard differential, 7 cents Princeton-Ayrshire over Linton-Sullivan and 3 cents Boonville over Princeton-Ayrshire. That formula is followed in our Indiana adjustment. But that is not the major factor to take into consideration in making that adjustment.

Q. Well, you do agree that distance has something to do with differentials?

A. Oh, yes, I would.

Q. But not sufficient to prevent lower rates for groups that are farther away?

A. Not when you set out Southern Illinois and Boonville and compare them, sir.

Q. Yes, and Princeton-Ayrshire. Put them in there.

A. The average distance from Princeton-Ayrshire to this whole destination territory, at least to the representative destination territory used by the carriers, is less than Southern Illinois.

[fol. 2394] Q. Then the other point that you made, that you think that competitive conditions between the origin groups in Indiana are so important as a principle that

distance should be ignored to the extent that higher rates should be charged, we will say, from Southern Illinois for a lesser distance than are charged from Boonville, for example, for a longer distance?

A. Yes, sir, because in a group adjustment of this kind, involving 14 or 15 origin groups, that situation is bound to crop up.

Q. You do agree with the Examiner on this one point, that if the average distance from one group be the same as from another, you say that the rate to a given destination should normally be the same as from another group of the same distance, provided the transportation conditions are the same, and that the mere fact one is called a base group and the other is called a differential group would not impair the integrity of that statement?

A. No, sir, I did not. If I said that I didn't mean to imply that in my answer before. The mere fact that the distances between two groups are similar or comparable should not be the basis on which to—and transportation conditions being similar—should not be the basis on which the rates should be set. Other considerations must be taken into consideration, Mr. Examiner; other factors, rather. Your competitive conditions. You understand that besides the [fol. 2395] operators' right to compete with each other, all the groups have a right to compete with another group; the carriers serving those same origin groups, all those must be given the right to compete with each other, and to shut off one group from a given market not only puts the operator out of that market but also puts the carrier serving that particular group out of that market, and the revenues suffer accordingly.

By Mr. Wilkinson:

You did say that the name that you applied to the group didn't mean anything, whether you called it the base group or a differential group; that has nothing to do with it?

A. No, sir.

By Exam. Trezise:

Q. All right, that is the one point that I was trying to say that you did agree with me, that the name shouldn't change the rate.

A. A base group, differential or a differential related group is not of major importance.

Exam. Trezise: Well, I am glad to have you help me in that respect. I think if no one else has any questions——

Mr. Biaett: I have a couple of questions.

Exam. Trezise: Mr. Biaett.

Cross examination.

By Mr. Biaett:

Q. Mr. Scott, in making your statement that you didn't think that the parties in this proceedings thought that rates should be made with regard to distance, as I understood [fol. 2396] your statement, you were referring to the application of a mileage scale from all groups, were you not?

A. Or the difference in the distance between those groups being given the major consideration or the only consideration in arriving at the differentials that might apply between those groups.

Q. Now, you seem to lay considerable stress upon the fact that the Commission has frequently stated that distance was not a controlling element in coal rate adjustments, do you not?

A. I think that—yes, sir, I do.

Q. Now, do you know of any case in which the Commission has stated as a principle that distance was not controlling, in which it prescribed a lower rate from a greater distant group than that applicable from the less distant group?

A. I know of a case in which the Commission made that statement, in which rates such as you describe were involved, yes, sir.

Q. Were involved, but not prescribed?

A. There was no prescription; there was approval given, approval to the differentials and differences in the rates that existed.

Q. That, of course, was 25595, was it not?

A. I believe that is it, and I believe they made some similar remark in 4368.

By Mr. Stadell:

[fol. 2397] Q. And that is the only case you know of on that point?

A. Right now. I might be able to find others if I looked.

Mr. Biaett: All right, that is all.

(Witness excused.)

Exam. Trezise: Ten o'clock tomorrow morning.

(At 4:40 p. m., October 4th, 1943, adjourned until 10:00 a. m., October 5th, 1943.)

[fol. 2398]

Morrison Hotel,
Chicago, Illinois,
October 5, 1943.

The hearing was resumed pursuant to adjournment at 10:00 o'clock a. m.

Before:

R. N. Trezise, Examiner.
W. C. Kaylor, Illinois Commerce Commission.
Appearances: As heretofore noted.

PROCEEDINGS

Exam. Trezise: All right, gentlemen, when you are ready will you begin.

A. J. CHRISTIANSEN, resumed:

Cross examination (Continued).

By Mr. Biaett:

Q. Mr. Christiansen, as I understand it, you are appearing in these proceedings, that is, Docket 28881 and I. & S. 5139 and the Illinois suspension case and the Dixon case, in behalf of Middle States Fuels, Incorporated, and Northern Illinois Coal Trade Association, is that correct?

A. Yes, sir.

Q. And the members of those two organizations own and operate mines in what is commonly known as the Fulton County District, do they not?

A. And Northern Illinois, yes, sir.

Q. And the Northern Illinois group?

[fol. 2399] A. That is right.

Q. Do the members of those organizations own and operate mines located at Peoria?

A. In the City of Peoria? No, sir.

Q. No members of your organization own or operate mines at Peoria, which is commonly known as the Peoria district?

A. No, sir.

Q. Do members of your organization own and operate the mines at Victoria?

A. Yes, sir.

Q. And at Alpha?

A. Yes, sir.

Q. And at Atkinson?

A. Yes, sir.

Q. Now, it is your contention, as I understand it, that the mines in the Fulton County district, the Peoria district, Victoria, Alpha and Atkinson should all take the same rates?

A. To this territory, you mean?

Q. In Northern Illinois.

A. To the affected territory, yes, sir.

Q. Now, can you tell me what is the geographical location of the largest mines in the Fulton County group with respect to Galesburg?

A. They are south and east of Galesburg.

Q. They are located, are they not, in the vicinity of Farm-

[fol. 2400] ington, Lewistown, Canton, Cuba, St. David?

A. Yes, they are located there. There is a big mine at Atkinson. There is a big mine at Victoria.

Q. Can you tell me where Victoria is located with respect to Galesburg?

A. East of Galesburg.

Q. North and east of Galesburg, is it not?

A. It is about straight east.

Q. The mine at Alpha is north of Galesburg, is it not?

A. That is correct.

Q. The mine at Atkinson is north of Galesburg?

A. Nort' east.

Q. Nort[illegible]ast of Galesburg?

A. Yes.

Q. Can you tell me the approximate distance from Lewistown to Galesburg?

A. Not offhand. It is shown in the mileage table.

Q. Can you tell me if it is farther from Lewistown to Galesburg than it is from Lewistown to Rushville?

A. I don't know.

Q. Could you give me the distance from Galesburg to Alpha?

A. I think it is either 15 or 18 miles.

Q. And from Alpha to Atkinson?

A. They are not on the same line of railroad, so it would have to move through the Tri-Cities to get to Atkinson.

[fol. 2401] Q. It would have to move through Rock Island?

A. Alpha and Atkinson are both in Henry County.

Q. Now, on page 15 of your prepared statement, you referred to Rochelle and the distance from Fulton-Peoria district to Rochelle and you show that distance on Exhibit 80, do you not?

A. I show the average distance to Rochelle on Exhibit 80, yes.

Q. And that distance is computed via the route over which the rate applies from the Fulton-Peoria district to Rockford, is it not?

A. It is shown both ways on Exhibit 80.

Q. It is shown both ways?

A. Yes, sir.

Q. The distance you used in computing your average distances from the Fulton-Peoria district to Rochelle is the distance computed via the route over which the rate to Rockford applies?

A. That is right, via C. B. & Q. to Mendota and the Milwaukee Railroad.

Q. And the reason you did that is because you contend that the rate to Rockford should apply at Rochelle because of the application of the intermediate rule?

A. It actually does. There isn't any contention about it.

Q. Can you tell me if there is any specific rate published from Fulton-Peoria district or Fulton County to Rochelle?

A. Via that route?

Q. No, is there a rate published?

[fol. 2402] A. Certainly there is a rate published.

Q. A specific rate is published to Rochelle?

A. Yes, sure.

Q. Via what route does that rate apply?

A. C. B. & Q. direct from C. B. & Q. mines.

Q. You know, Mr. Christiansen, do you not, that the intermediate rule does not apply to points where a specific rate is published?

A. No, I don't know that. It does via another line of railroad.

Q. What do you mean by that?

A. In other words, there is no specific rate published via the C. B. & Q., Mendota, and the Milwaukee, to Rochelle. There is a rate published to Rockford beyond and under the Illinois law the intermediate application applies. You can't have a rate in Illinois unless there is 40th Section relief, and there isn't any to Rochelle.

Q. Doesn't the tariff provide, Mr. Christiansen, that where there is a specific rate published the intermediate rule will not apply?

A. That is all right where a specific rate is published via the same line. There isn't any specific rate published to Rochelle via C. B. & Q. to Mendota.

Q. Then you do not find the route which you have used in connection with the specific rate which is published from [fol. 2403] Fulton County to Rochelle?

A. No, I do not. I used the shorter route.

Q. Will you turn to your exhibit 81, please, on page 1, for example, from the Fulton-Peoria district to Chicago, Illinois, you show that there are rates in effect of $1.48, $1.53 and $1.65?

A. That is correct.

Q. Then using the going rate from the Fulton-Peoria district you show the going rate is $1.65 and $1.53?

A. That is correct.

Q. Now, the $1.53 rate applies only from Peoria, does it not?

A. That is correct.

Q. Now, the $1.65 rate applies from the mines in the Fulton County District, does it not?

A. That is correct.

Q. And the $1.48 rate applies from the mine at Victoria, does it not?

A. No, sir.

Q. Well, from what mine?

A. It applies from Atkinson.

Q. From Atkinson to Chicago?

A. That is correct.

Q. What is the rate from Victoria to Chicago?

A. The Victoria rate is $1.59.

Q. $1.59?

[fol. 2404] A. That is correct.

Q. So that you have a rate from Victoria which you have not shown on this exhibit, do you not?

A. It is shown on the detail on page 3. Evidently it didn't get transferred over.

Q. Now, this $1.65 rate which you use as the going rate from Fulton-Peoria District, that applies from the large mines which are located in the vicinity of Farmington, Lewistown, St. David, does it not?

A. That is correct, yes, sir.

Q. And the same is true of the number of rates which you show to Davenport, Dubuque, Linwood, Moline, Rock Island, Savanna, is it not, the same explanation?

A. To Davenport and Linwood the rate shown of 90 cents—as an illustration, to Davenport there, the 90 cent rate applies from Atkinson and Victoria. The $1.25 rate is the Fulton County going rate. This is strictly short haul territory. The distance from Atkinson to Davenport is only 35 miles.

Q. From Atkinson?

A. That is right; 38.

Q. And from Alpha to Davenport it is even less than that, is it not?

A. Atkinson is 31.3 miles and Alpha is 39.6 miles to Davenport.

Q. Now, I notice at Savanna you show rates of $1.25, $1.74 and $2.00.

[fol. 2405] A. That is correct.

Q. From what districts do those rates apply?

A. Fulton County District. The $1.25 rate applies from Atkinson and Alpha. The $1.74 and $1.57 rate applies from various Fulton County mines. The $2.00 rate and the $1.75 rate applies from Peoria.

Q. Now, Mr. Christiansen, I presume that this exhibit is introduced in justification of your contention that all of the mines in this broad Fulton-Peoria District which you take into consideration should be the same to the Northern Illinois territory, is it not?

A. This territory is not the affected territory. This is the compared territory.

Q. Yes. Now, the fact that the mines at Atkinson, Alpha, Victoria, Fulton County, do not take the same rates to this compared territory, I presume you are submitting in justification of the fact that all of these mines should take the same rates to Northern Illinois?

A. No. You are looking at the wrong picture. You are looking at points like Davenport, Iowa, where Alpha and Atkinson are really short hauls, around 35 miles. But take any point in this territory in the northern part of the state of Illinois or in Wisconsin and you will find that Fulton County, Alpha, Atkinson, Victoria and Peoria have the same rates. Now, we are getting into a new territory here. [fol. 2406] Just like you have at Springfield, you have a lower rate to Bloomington, you have a lower rate to Decatur from one Springfield point than you do from another Springfield origin point. But that isn't any reason why they shouldn't be all the same when you go to Wausau, Wisconsin, or Beloit, Minneapolis. You are in a new territory.

Q. Dubuque, Iowa, I notice you show rates of $1.73 and $2.19.

A. Yes, sir. The $1.73 rate was within that 100 miles west of the Mississippi River territory that was prescribed

by the Interstate Commerce Commission to Dubuque, Iowa. Now, the $2.19 was the rate that was also prescribed in that case to Dubuque, Iowa, from the Fulton County District. But here you have a situation where Dubuque does have lower rates. But the carriers are not proposing lower rates from Alpha and Atkinson and Victoria to this territory. They are proposing the same rates. Now, if they are going to publish the same rates or higher rates from these nearby points, you certainly must include them in figuring mileage. If you want to come forth now and offer lower rates from Alpha, Victoria and Atkinson, very good, we will take it. But you want to propose the lower rates—or the higher rates from Alpha and Atkinson, but you don't want to use them in figuring mileages to measure that level.

Q. As a matter of fact, to most of this territory involved in this area, Alpha and Atkinson and Fulton County and Peoria take different rates, do they not?

[fol. 2407] A. No, not to the affected territory.

Q. I am talking about to the general territory for distances up to 125 miles.

A. No, I am talking about the affected territory. They take the same rates to the affected territory. That is what we are considering here, not the territory in Springfield, not the territory in Iowa, not the territory in Peoria proper. They take a different rate—as a matter of fact, to Canton, Illinois, there is a different rate than to Rockford.

Q. Well, both of those points are located in the Fulton County field?

A. Yes, but that is a new territory. Here is a new territory. We are not making rates into this territory here. We are making rates to the affected territory.

Mr. Vesey: What do you mean by "this territory"?

The Witness: The territory referred to in Exhibit 80.

By Mr. Biaett:

Q. Then what I want to get at, you are not contending anything different than the carriers are actually doing, are you?

A. No, except that I want them to use the mileage from the nearby points. I don't want to take a group, take a group

like Springfield district—suppose you took the Springfield district today and said, well, because Springfield has a lower rate to Bloomington, Illinois, than Mount Olive, we will only use Mount Olive mileage to measure the rates to [fol. 2408] Wisconsin. That is wrong. If you are going to take the Springfield rates and give them the same rate to Mount Olive as Beloit, Wisconsin, or Wausau, certainly you wouldn't take only Mount Olive. Now, what you are trying to do is to give Atkinson the same rate as Fulton County, but you don't want to use the mileage to measure that rate.

Q. Mr. Christiansen, in view of the fact that Atkinson and Alpha, Victoria, Peoria and Fulton County take different rates to this compared territory that you show on page 1 of Exhibit 81, isn't there a question of the reasonableness of the rate measured by the distance from those particular mines to the suspended territory?

A. No, sir, it is not. Just because they happen to have a different rate to some different territory, it doesn't mean they have to be used to measure the level of the rates to the affected territory.

Q. Just because they happen to take the same rates you think to this particular territory they should be included in the Fulton-Peoria group?

A. That is correct.

Q. Now, will you please refer to your exhibit 83, this announcement of the Interstate Commerce Commission, dated April 23, 1925. Did that apply to the territory in Northern Illinois to which rates are under suspension and involved in the 13th Section case in these proceedings?

[fol. 2409] A. Only as far as Beloit, Wisconsin, there is a proposal to relate Northern Illinois to Beloit. In other words, if the Beloit rate is wrong now it should be corrected back to the basis announced in 1925. Then the Rockford rate made 15 cents under that would be a different rate than that the carriers propose.

Q. Then it is submitted, is it not, purely for the purpose, following up your contention, that the rates to Beloit are on an improper basis at this time?

A. Certainly, and Beloit is one of the key compared points in which you are trying to fit Northern Illinois into,

and certainly if that is unreasonable, why, it has got to be corrected before you can fix up the Illinois.

Q. But it is only one point out of several.

A. It is the most important because it is the one where the 15 cents order applies, that is, the 15 cent order to make Beloit and Rockford 15 cents apart.

Q. I notice that this announcement indicates that a conference was held by the various parties who were involved.

A. That is right.

Q. Were you present at any of the conferences which were held?

A. No, my people were. I wasn't.

Q. And this announcement is merely a compromise of a pending investigation and suspension case, is it not?

A. That is right, and a complaint case.

[fol. 2410] Q. And a complaint case?

A. That is right.

Q. The carriers could have gone ahead and published the rates which were agreed to without the formality of this announcement, could they not?

A. Yes. The Commission only sent the notice around so everybody would know what was agreed to.

Q. I notice on page 2, numeral paragraph 2, that this 79 cent differential to which you refer, Fulton-Peoria under Southern Illinois, was subject to a minimum rate of $1.90 a ton?

A. That is correct.

Q. Now, that minimum rate applied not only to Beloit, Wisconsin, but it also applied to all points in Wisconsin on and south of the line of the Milwaukee, from Milwaukee, Wisconsin, to Prairie du Chien, Wisconsin, did it not?

A. It has no effect, because Beloit was the closest point and the rate published to Beloit was $1.96 or 6 cents higher than the minimum. So it had no effect to any Wisconsin point.

Q. So as far as that minimum was concerned, it wasn't taken into consideration?

A. It didn't have to be, so long as the rate from Southern Illinois was $2.75 to all of that compared territory.

Exam. Trezise: You don't have to talk quite so fast, Mr. Christiansen.

By Mr. Biaett:

[fol. 2411] Q. It was also subject, was it not, to the present or suspended rates, whichever were lower?

A. Yes, that was true.

Q. But none of them were below $1.90, I take it?

A. That is correct.

Q. Now, as I understood you, the rate was actually published from Fulton-Peoria to Beloit at $1.96 a ton?

A. That is correct.

Q. What is the present rate from Fulton-Peoria to Beloit?

A. $1.80.

Q. Does that rate include Ex Parte increases or general increases?

A. 15 cents, Ex parte 115.

Q. 10 cents?

A. 15 cents.

Q. So that excluding Ex Parte 115 increase, the present rate from Fulton-Peoria to Beloit would be $1.65, would it not?

A. That is correct.

Q. And that is approximately 31 cents lower than the rate which was published to Beloit on July 19, 1925?

A. That is correct, 31 cents lower from Fulton County, 50 cents from all the other origin groups.

Q. And it was 25 cents lower than the minimum which was established in the Hardie announcement?

A. That is correct. But you can't have a minimum from some particular close in group and then reduce the rates [fol. 2412] from all other origin groups 50 cents or $1.00 a ton and expect that minimum to remain. It just can't be done.

Q. Well, as far as this announcement is concerned, it prescribes the minimum rate?

A. That is correct.

Q. And you are basing your contention for a 79 cent differential on this announcement?

A. No, only on the relationship that is established in that announcement.

Q. Might not a change in the level of the rates require a change in the relationship?

A. They ought to increase if they reduced the rates.

Q. It should increase?

A. That is right.

Mr. Vesey: The differential, you mean?

Mr. Biaett: For what reason?

The Witness: Well, I wouldn't say increase; it ought to remain the same.

By Mr. Biaett:

Q. It should remain the same?

A. That is right.

Q. And on a percentage basis, taking in the reduced rates from Fulton-Peoria and the reduced rates from Southern Illinois, it should be decreased?

A. No, it should not.

Q. It would be on a percentage basis?

[fol. 2413] A. It would be on a percentage basis, but Southern Illinois or no one else here wants the rates decreased or increased on a general increase on a percentage basis, because if you do, the short haul- gain.

Q. You are speaking for all parties in making that statement?

A. I know the attitude of both the Commission and the carriers and the Southern Illinois and Indiana operators. When the differential does exist, they don't want rates increased on a general increase on a percentage basis.

Q. On page 25 of your prepared statement you make the blunt assertion that the minimum rate from Fulton-Peoria to Beloit of $1.90 provided for in the 1925 agreement was predicated upon a rate of $2.75 a ton applying from Southern Illinois to Beloit.

A. That is right.

Q. Will you show me where in the Hardie announcement a rate of $2.75 from Southern Illinois to Beloit is mentioned?

A. Yes. $1.96 was the rate from Fulton-Peoria to Beloit, Wisconsin, and the differential was made 79 cents. If you add 79 cents to $1.96, you get $2.75.

Q. Where in this announcement is the $1.96 rate mentioned?

A. It is only mentioned in connection with paragraph 2, where it says the present rate—the present or suspended rate; whichever was lower, would remain in effect. It

happened to be the present rate at that time, the $1.96, as I understand.

[fol. 2414] Q. Well then, you could say it was predicated upon a rate of $2.65 from Boonville, could you not, just as well as you could say it was predicated upon the $2.75 rate from Southern Illinois?

A. No, I don't think you could, because as I understand, there weren't any rates from Boonville at that time.

Q. Well, it could be predicated upon the rate from Princeton, just as well, by using your reasoning?

A. That is right.

Q. But no place in the Hardie announcement does it refer to a specific rate of $2.75 from southern Illinois to Beloit?

A. No, sir.

Q. Now, will you turn to your Exhibit 85, please, page 2.

A. Yes, sir.

Q. On that page you show the so-called Midland Electric Scale. Will you tell me from what districts and to what points that scale was prescribed?

A. It was prescribed from the Fulton-Peoria district to interior Iowa destinations.

Q. And that scale was prescribed as a reasonable maximum of rates from the Fulton-Peoria district to interior Iowa destinations, was it not?

A. That is correct.

Q. Now, it was my impression from this Exhibit 85 that you contend that rates from Fulton-Peoria to, let us say, [fol. 2415] Rockford and the rates from Southern Illinois to Rockford should reflect the same percentage of the Midland scale.

A. No, I did not say that.

Q. Well then, these comparisons which are contained in your exhibit are not to be construed as indicating a contention that Fulton-Peoria should have the same percentage of the Midland scale as Southern Illinois to Rockford?

A. No, sir, it doesn't show anything like that.

Q. Well, the percentages are shown, are they not?

A. Oh, yes, but they are not the same.

Q. It does show, does it not, that the rates from Fulton-Peoria to Rockford are a different percentage of the Midland scale than the rates from Southern Illinois to Rockford?

A. Yes, sir.

Q. Now, can you tell me if the Midland Scale was prescribed from Southern Illinois to interior Iowa?

A. No, sir, it was prescribed from Fulton-Peoria as the base group, and Southern Illinois was made 70 cents over, for approximately the same distance as applies from Fulton-Peoria.

Q. It was also made 60 cents over for approximately the same distance, was it not?

A. No; for a longer haul.

Q. You are speaking of distance?

A. That is right.

Q. For a difference in distance it was also made 60 cents [fol. 2416] over, was it not?

A. The difference varied slightly, but the distance there, you had hauls of up to 600, 700 miles—600 miles from Southern Illinois, and naturally, as you move away from the district the same difference in distance might reflect a different differential, decrease. In the same way it would increase as you move toward the district. Rockford happens to be short haul or comparative short haul territory, compared to the territory in Western Iowa.

Q. Now, can you tell me if the Midland Electric scale was also prescribed from Western Kentucky to interior Iowa?

A. No, it was not. They weren't even involved in that case.

Q. How were the rates which were actually published from Western Kentucky to interior Iowa constructed?

A. They were made by use of the decision in the Western Kentucky cases which made them 35 cents over Southern Illinois, whatever Southern Illinois was they have to be 35 cents over.

Q. Now, will you turn to page 9 of your Exhibit 85, please. As I understand, this page of your exhibit, this last column, Column G shows what the rates from Fulton-Peoria to the Illinois destinations named would be if they were constructed on the same percentage of the Midland scale as the rates which were prescribed from Western Kentucky to Chicago?

A. That is correct.

Q. Now, to the points in the territory to which the Mid-
[fol. 2417] land scale was prescribed, that Midland scale was not prescribed from Western Kentucky, as you just stated?

A. No, sir, but we have measured it by what per cent the Western Kentucky rate is as prescribed in the last Western Kentucky case to Chicago. In other words, we found out what per cent they prescribed from Western Kentucky to Chicago of the scale. We didn't say they prescribed the scale.

Q. No, that is true; and you contend that the rates from the Fulton-Peoria district to these points should be measured by the same percentage of the Midland scale as they prescribed from Western Kentucky to Chicago?

Mr. Vesey: Are you asking the question or stating a fact?

Mr. Biavtt: I am asking a question.

The Witness: In this particular case I used the same percentage of the Midland scale to show what that rate would be from Fulton-Peoria to these destinations, having in mind that the carriers testified and made a strong case in the Western Kentucky case that transportation conditions are so much adverse from Western Kentucky to Chicago than they are in Illinois Freight Association territory that we ought to take that into consideration in prescribing a reasonable level of rates within the State of Illinois. Now, if 72.3 per cent of the Midland scale is proper from Western Kentucky to Chicago, with their adverse transportation conditions, then because our haul happened to be shorter we ought to apply something less
[fol. 2418] than we would normally apply if our haul was less.

Q. From Fulton-Peoria to interior Iowa 100 per cent of the Midland scale was prescribed?

A. That is correct.

Q. From Western Kentucky to interior Iowa did the rates reflect 100 per cent of the scale or something higher or lower of the scale?

A. They were $1.05 over Fulton County, whatever Fulton County was.

Q. And generally the rates which were actually published reflected a lower percentage of the scale than that applying from Fulton County?

A. Yes, that is right.

Q. Now, taking the Midland scale which you show in this exhibit, can you tell me if any of the rates which the carriers are proposing to Northern Illinois are on a higher level than the Midland scale itself?

A. I don't believe there are any that are actually higher, except from Atkinson there might be some. I think Atkinson to DeKalb is higher than the Midland scale.

Q. From the Fulton County District?

A. Well, as far as I am concerned, they are all Fulton-Peoria.

Q. Well, you have the computations from the Fulton County District. Are there any rates which are greater than 100 per cent of the Midland scale?

[fol. 2419] A. I would say there are none.

Q. Now, on page 3 of your exhibit you show the 23922 scale.

A. Yes, sir.

Q. I believe you stated that that scale was prescribed to apply over what you referred to as short circuit mileages.

A. That is correct.

Q. Can you tell me what percentage of that scale the proposed rate to Dixon is as measured by the averag shortest or average short tariff route mileages?

A. The full scale would produce a rate of $1.49 for 120 mile haul or $1.55 for a 130 mile haul.

Q. And the $1.55 is the rate which is proposed from Fulton County to Dixon?

A. That is correct.

Q. Now, can you tell me if the mileages were figured from the Fulton County District via the short circuit method, whether or not there would be any less than the distances figured via the shortest or short tariff route mileages?

A. By dropping one block, it would be 120 miles instead of being 121 or 122, and produce a rate under the 23922 scale of $1.49.

Q. Via what route would you shorten the distance?

A. I couldn't tell you without figuring it out.

Q. As a matter of fact, the only possible route over which traffic can move from Fulton-County to Dixon is the averag [fol. 2420] shortest or average short tariff route, is it not?

A. No, there are others.

Q. There are others, but they are longer, are they not?
A. No, sir.

Mr. Vesey: I didn't get your answer.
The Witness: I said, no, sir.

By Mr. Biaett:

Q. Now; on page 4 of that exhibit, you referred to the Holmes and Hallowell scale?

A. Yes, sir.

Q. Do any of the rates which the carriers are proposing from Fulton County, Peoria, Victoria, to the suspended destinations in Northern Illinois exceed that scale?

A. The only rates that exceed the actual application of the scale in the Northwest territory as shown in my exhibit No. 90 is the fine coal rate from Fulton-Peoria District to Beloit, Wisconsin, where the actual rate today is 100.1 per cent of the Holmes and Hallowell level.

Q. Well, that is a constructive method which you have used for lowering the scale, is it not? But the scale itself which was prescribed, are there any rates which are higher than that scale?

A. I don't believe so, except possibly from Atkinson.

Q. Are you familiar with the traffic for which the Holmes and Hallowell scale was prescribed?

A. In a general way.

[fol. 2421] Q. That traffic had received a prior rail haul, has it not?

A. Yes, but the Commission found it was a local rate.

Q. Did you answer, yes?

A. I said, yes, but the Commission found that that was a local rate that applied.

Q. And that it also paid a dumping charge at the lake ports?

A. Oh, yes, I would say it had.

Q. And it has paid a boat transportation charge, has it not?

A. That is correct.

Q. Are you familiar with the South Chicago Coal & Dock case?

A. I have read it, I guess.

Q. You recall in that decision the Commission found that the rates prescribed on the Holmes and Hallowell scale were in the nature of proportional rates because the traffic had received a prior rail and boat haul?

A. I believe there was something in there. The decision will speak for itself.

Mr. Stadell: Well now, I object to that question and answer, if the Examiner please, and move that the answer be stricken, on the ground that the report of the Commission itself is the best evidence.

Mr. Morgan: Why not remove the question.

Mr. Biaett: Mr. Examiner, I merely interjected the question because Mr. Christiansen had already told me what the Commission found, that they were local rates. The pur- [fol. 2422] pose of my question was to bring out the Commission had later decided they were in the nature of proportional rates because of these prior hauls.

Mr. Stadell: I disagree with that and I was in that case and I know we argued about it.

Exam. Trezise: Let us not argue, gentlemen. The decision will speak for itself.

By Mr. Biaett:

Q. Now, you stated on page 30 of your statement that the transportation conditions from the Head-of-the-Lakes are not admittedly as good as applying from this territory.

A. That is common knowledge.

Q. You were basing that on your common knowledge?

A. Yes. Everybody in the room knows it.

Q. Now, up to 160 miles, would you say the transportation conditions from the Head of the-Lakes were inferior to those applying from Fulton County to Sterling or Dixon or Rockford?

A. I wouldn't know whether they were actually inferior or not.

Mr. Vesey: May I ask one question here for the purpose of clarifying the record?

Mr. Biaett: Certainly.

By Mr. Vesey:

Q. Mr. Christiansen, when you use the term "Head-of-the-Lakes", what ports are you referring to?

A. Well, generally, Duluth and Superior, and I believe there are several other ports up there at the Head-of-the-Lakes.

[fol. 2423] Q. But do you refer, for example, to the west bank Lake Michigan ports?

A. No, sir.

Q. In other words, it is the Lake Superior ports you refer to when you use the phrase "Head-of-the-Lakes"?

A. That is correct.

Mr. Biaett: Those are the docks from which the scale was prescribed.

By Mr. Biaett:

Q. Now, in taking into consideration your common knowledge, do you agree with Mr. Rozene when he takes the position that the Holmes and Hallowell scale is comparatively low for the first 160 miles because the transportation conditions from the Duluth and Superior ports to the Twin Cities were ideal?

A. I think the H. & H. scale does have perhaps a slight abnormal gradation. I wouldn't say that it was particularly low. The thing is this, that as far as the Twin Cities are concerned, the rate from the Head-of-the-Lakes to the Twin Cities is 40 or 50 cents under the scale today.

Exam. Trezise: I didn't understand that you used that Holmes and Hallowell scale as a reasonable measure of any of your rates.

The Witness: No. We used it as a yardstick to measure other rates.

Exam. Trezise: You didn't use it as a reasonable measure [fol. 2424] of a rate?

The Witness: No, sir.

Mr. Vesey: Simply as a common denominator for comparing two rates.

Exam. Trezise: Yes.

By Mr. Biaett:

Q. Then you can't say up to 160 miles the transportation conditions under the H. & H. scale are admittedly superior to those from Fulton County to Northern Illinois?

A. No, I didn't say they were. I don't think they are as good.

Q. But you made no study of that condition?

A. No, sir.

Q. You don't know the roadbed, the curves, or the traffic density applying on that line?

A. No, sir.

Q. Do you know whether or not any gathering service is required at the Head-of-the-Lakes on coal moving to the Twin Cities?

A. No, sir.

Exam. Trezise: What point are you trying to make, Mr. Biaett? If he didn't use that, are you trying to develop new evidence of some kind?

Mr. Biaett: Well, he has used the scale and he is attempting to show that these rates in this territory are too high by use of the scale, taking it on a constructive basis.

Exam. Trezise: Are you doing that?

The Witness: No, sir. There is no comparison with the [fol. 2425] scale itself. The scale is used merely as a yardstick, and the carriers used it first in their exhibit. That is why I used it in mine. It was used merely as a yardstick to measure the level of the rates from one district as against another, or one destination territory as against another destination territory.

By Mr. Biaett:

Q. Is your Exhibit 89 the exhibit on which you show the constructive application of the scale? I am unable to find it right now.

A. Exhibit 90, I believe.

Q. And the purpose of that exhibit is introduced in this record not to show that the H. & H. scale is too high for application in this territory, I take it, from your last answer?

A. That exhibit was made up after Mr. Rozene had presented his Exhibits 37 and 38, in which he set forth what the level of the rates actually was in the Holmes and Hallowell territory as measured by the shortest tariff route, and I merely made this exhibit up to show what the level of the rates was from Fulton-Peoria to Beloit as measured by the level of the rates in the Holmes and Hallowell territory.

Exam. Trezise: But the scale that you compare rates with there, called the Holmes and Hallowell scale, is not in existence for application on any traffic?

The Witness: No, sir.

Exam. Trezise: So it couldn't be a measure of a reason-
[fol. 2426] able rate.

By Mr. Biaett:

Q. Now, throughout your exhibits you have referred to different class rate levels in the different territories. Are you familiar with Central Freight Association territory class rates?

A. Yes, sir, they are the same as apply in Illinois, as far as the level is concerned.

Q. Do you think that the class rate level should be taken into consideration in measuring coal rates?

A. Only in so far as it reflects the difference in transportation conditions in two territories.

Q. Well, in what manner do the differences in class rates reflect the differences in transportation conditions?

A. The class rates in Western Trunk Line territory Zone 1, Zone 2 and Zone 3, and in Illinois Freight Association territory, were fixed after an exhaustive investigation, and in that investigation the Commission made certain findings and observations as to levels of rates that ought to prevail because of different transportation conditions in the different territories, and I think that is one of the best tests to find out what the transportation conditions are, because that was a very exhaustive investigation.

Q. And it is your contention that the Commission should make coal rates along the lines of class rate levels?

A. At least they should make coal rates in this Illinois
[fol. 2427] Freight Association territory that are lower than

the level of rates which they make, for instance, from Missouri into Iowa where the class rates are on a higher basis.

Q. Now, when you say that the differences in the level of class rates reflects differences in transportation conditions, just what do you mean?

A. In the class rate investigation they had an exhaustive investigation, they had cost studies, they had studies of densities of traffic, and population, and single and double track railroad studies. I think they had just about everything they needed to ascertain whether one level was on a higher level than another or whether one territory was more difficult than another.

Q. And then in prescribing the level of class rates in C. F. A. territory and in prescribing the level of class rates in I. F. A. territory, they had that same data before them?

A. That is correct, and they prescribed the same level of class rates.

Q. That would indicate the transportation conditions in I. F. A. territory are the same as those in C. F. A. territory?

A. Approximately, yes.

Q. Mr. Christiansen, based on that assumption, would you be content to have your coal rates from Fulton County, always within the confines of I. F. A. territory, measured by the standard of reasonableness which the Commission [fol. 2428] has prescribed for coal rates in C. F. A. territory?

A. No, we don't compete with Ohio.

Q. You don't compete with Ohio?

A. No, sir.

Q. Well, you don't compete with anyone in this other destination territory, do you, as far as your Illinois, Indiana and Western Kentucky differentials are concerned?

A. We compete with ourselves.

Mr. Morgan: I object to that question, for the reason this witness was not put on for that purpose. He introduced no original evidence on that question, and the railroad carriers have thought it unnecessary to introduce any evidence on that purpose themselves, and they are merely

trying to build up their own case by introducing new evidence through this witness.

Exam. Trezise: Well, if you are going outside of the direct examination, the Examiner is very——

Mr. Biaett: I asked him the question because he said he didn't compete with the eastern carriers.

Exam. Trezise: Oh, that particular question.

Mr. Biaett: I will pass that if there is any objection to it, because everybody knows the answer to it.

By Mr. Biaett:

Q. Now, on page 6 of your Exhibit 85 you have a reference B in parentheses, basis 88 per cent of Holmes and Hallowell scale; is that taken from the report in the Hunts-
[fol. 2429] ville-Sinclair case?

A. I don't know whether they mentioned it, but the scale they prescribed was 88 per cent of the Holmes and Hallowell scale at that time.

Q. Did you ascertain that from your own computations?

A. I checked out some of those, yes.

Q. Now, I notice that you have an average Class D rate from Peoria of 14.5 cents per hundred pounds.

A. That is correct.

Q. By taking the distance and their Class D rate to 13 destinations in Northern Illinois, including Beloit, Wisconsin.

A. Yes, sir, the affected territory.

Q. And the bottom part of that page, you show average Class D rate from the North Missouri mines, that is, Huntsville, Belvidere, and Novinger, to five Iowa destinations is 20.3 cents per hundred pounds?

A. That is correct.

Q. Now, in one comparison you used 13 points, did you not?

A. That is correct.

Q. Now, why did you use only five points in your other comparison?

A. I had to pick points that were approximately the same distance as is reflected in the 13, namely, from around 120 miles to 220 miles. In fact, I have used destinations in the

Missouri-Iowa comparison that are slightly less mileage [fol. 2430] than the destinations in the Fulton County, Illinois Beloit, Wisconsin comparison. Had I used the points that had the same mileage or approximately the same mileage, I would have probably got a higher rate from the Missouri points, but I couldn't find enough towns that had the exact mileages of the 13 towns. In other words, I couldn't find 13 of them.

Q. Well now, let us look into that just a little bit, Mr. Christiansen. In the comparison at the top of the sheet, how many points in Northern Illinois did you take which were under 156 miles?

A. 7.

Q. And how many points from north Missouri did you take which have a distance under 156 miles?

A. One.

Q. Now, how many points in Northern Illinois, and including Beloit, did you take that have a distance under 178 miles?

Mr. Vesey: I object, if the Examiner please. We don't need to go over everything that is shown in the exhibit here. That is just reading the exhibit back into the record.

Exam. Trezise: Do you have a conclusion?

Mr. Biaett: Yes, sir, very definitely.

The Witness: Five points.

Mr. Vesey: Let us get the conclusion.

Mr. Biaett: Under 178 miles?

Mr. Vesey: Just a minute, I have an objection.

[fol. 2431] Exam. Trezise: Can't you just recite the facts to the witness and then ask him your question?

By Mr. Biaett:

Q. Well, there are twelve points under 175?

A. Yes. You are including the first group.

Q. And from north Missouri there are three points under 178 miles, is that correct?

A. That is right.

Q. Now, in taking a large number of points to Northern Illinois which have a low mileage and consequently a low Class D rate, you weight the average which you show to a

greater extent than you weighted the average from the North Missouri mines?

A. No, sir. All of those rates, for instance, 126 mile haul, 124 mile haul, 142 mile haul, 148 mile haul, 164 mile haul, and 171 mile haul, they all had a 14 cent rate.

Q. But you only used one point with an 18 cent rate from the North Misouri mines?

A. That is right.

Q. Now, if you had used twelve points with an 18 cent rate from the North Missouri mines, you would have secured a lower average rate, would you not?

A. No. Some of these twelve points that you referred to here have a 16 cent rate as against 14.

Q. Well, how many points have a 14 cent rate? There are seven, are there not?

A. Seven with a 14 cent rate.

[fol. 2432] Q. And if you had taken seven that had an 18 cent rate from north Missouri mines to Iowa, you would have a considerably less average rate?

Mr. Vesey: What do you mean by "considerably"?

Mr. Biaett: The witness can explain how much it is, if he knows.

Mr. Vesey: You made the statement. I asked you what you meant. Do you mean one point or two points, something like that?

Mr. Biaett: Well, at least two points.

The Witness: No, we would not.

By Mr. Biaett:

Q. You would not?

A. No, sir.

Q. Why not?

A. Because the relationship of 18 to 23 as against 14 to 16 is so close—well, you can figure it out. Take seven points with an 18 cent rate—well, we will take eight points with an 18 cent rate——

Mr. Biaett: Well, I don't think we need to go into it.

Mr. Vesey: Well, you asked for it.

The Witness: Now, just a minute. We will take eight points with an 18 cent rate, and that leaves five more, and those have 15 and 16 cent rates. We will take three of the

five and give them a 20 cent rate, and two of the five and give them a 23 cent rate.

[fol. 2433] By Mr. Biaett:

Q. Why take two of the five and give them a 23 cent rate?

A. You have two 16's here. I want to give you an even break. It would be 20 cents then instead of 20.3 cents.

Q. By using 13 points?

A. Yes, by using 13 points it would be 20 cents instead of 20.3 cents.

Mr. Vesey: In other words, it makes .3 difference as shown in your exhibit?

The Witness: Yes, sir.

By Mr. Biaett:

Q. On page 7 of your Exhibit 85 you show in Column J the differentials?

A. That is right.

Q. Do you know the rates which apply from the Fulton-Peoria District and Southern Illinois to those points?

A. It is shown. Yes, I know them.

Q. In what column are they shown?

A. They are not shown on this exhibit, but they are shown on other exhibits.

Q. Well, the rates to Wausau, Wisconsin, from Southern Illinois and Fulton-Peoria both are higher than they are to Dixon, are they not?

A. Absolutely. That is what the exhibit purports to show, as you get away in longer distances the percentage of mileage is of less importance. As you come closer it [fol. 2434] is more important, between two groups located approximately the same distance apart. Therefore, the differential ought to increase. Here it decreases.

Q. As far as the exhibit is concerned, it shows just the opposite, doesn't it, Mr. Christiansen?

A. No, it does not.

Mr. Vesey: I object, Mr. Examiner. Why argue over the fact of what is shown in the exhibit. You don't need to argue here with the witness.

Exam. Trezise: I think you gentlemen get along better if you just ask the questions and let the witness answer.

By Mr. Biaett:

Q. In other words, the point I am getting at, Mr. Christiansen, is simply this: do you know the rate from Southern Illinois to Wausau, Wisconsin?

Mr. Vesey: I object. We have asked that question at least twice already and it is in the record. Now, can't we go on from those points, or do we have to repeat exhibit after exhibit into the record here?

Mr. Biaett: I have no objection to swearing Mr. Vesey and having him sit up there alongside Mr. Christiansen and answer these questions.

Exam. Trezise: I don't know what point you are trying to make, Mr. Biaett.

The Witness: $3.70.

By Mr. Biaett:

Q. What is the rate to Dixon?

[fol. 2435] A. $2.00 to Dixon.

Q. What is the rate from Fulton County to Wausau?

A. $3.00.

Q. $3.00?

A. Correct.

Q. And the rate from Fulton County to Dixon is how much?

A. $1.50.

Q. So that the spread in the rates arises where the rates themselves are considerably higher than they are to Dixon, for example?

A. Yes, and that is the reverse process that ought to be in existence, in other words, the mileage as shown in Column I——

Exam. Trezise: Now, he didn't ask you whether it was a reverse process. Just answer the questions. You can explain your answer, but you are explaining something he didn't ask.

By Mr. Biaett:

Q. Now, on page 20 of your exhibit 85, you show comparisons of rates to Amboy?

A. Yes, sir.

Q. Those comparisons are made with the Midland Electric scale, are they not?

A. That is correct.

Q. Now, can you tell me if measured by the Midland Electric scale the rates from Fulton-Peoria to Amboy, Illinois, are on a higher or lower level than those to an average of seven Wisconsin destinations?

[fol. 2436] A. The Fulton-Peoria rates are on a lower level than the average of the Wisconsin destinations from Fulton-Peoria.

Q. And on page 22 the same is true with respect to the rates from Victoria to Amboy, is it not?

A. No, sir. You mean the present rates or proposed rates? The proposed rate is .5 of 1 per cent higher to Amboy than the present rates to the interstate points in Wisconsin.

Q. .5 of 1 per cent higher?

A. Higher.

Q. As measured by the scale?

A. That is right.

Q. On page 23 of your Exhibit 85 you show certain comparisons with the rates from Fulton-Peoria to Amboy, Illinois, and the rates to Clinton, Iowa.

A. That is correct.

Q. Will you tell me if the rates to Clinton, Iowa, were prescribed in the Midland Electric case?

A. No, sir, they were not.

Q. They were not prescribed?

A. No, sir.

Q. Were the rates to Clinton, Iowa, found unreasonably high in that case?

A. I don't think so.

Q. Now, on page 24 you show comparisons of the rates from Fulton-Peoria to Dixon, Illinois, with rates to Wisconsin.

[fol. 2437] A. That is correct.

Q. Based upon the Midland scale?

A. That is correct.

Q. Can you tell me if the rates which the carriers charge from the Fulton-Peoria District to Dixon are in a higher or lower level than the present rates from Fulton-Peoria to the seven Wisconsin destinations which you show?

A. Higher level, 1.5 per cent higher than the level of Wisconsin, using the carriers' mileages.

Q. How do you get that?

A. Last column, Column L, line 21.

Q. Well, based upon your own mileages?

A. Well, I am using it on yours.

Q. I am asking you about your own mileage.

Mr. Vesey: Mr. Examiner, I object. This is all set forth in the exhibit. Nothing is gained by this examination, as to whether or not it is 1.5 that appears in the column or whether 2.3 ducks appears in there. It is all in the exhibit. We can read that.

Mr. Biaett: Will you answer the question?

Mr. Vesey: Just a minute. I have an objection to the question.

Exam. Trezise: The Examiner does not know what Mr. Biaett is driving at, and therefore is unable to rule on it. Go ahead with the question.

[fol. 2438] The Witness: It is .1 of 1 per cent lower using our mileage and 1.5 per cent higher using the carriers' mileage.

Exam. Trezise: Now, what is the question about that? Do you have a question about that?

Mr. Biaett: Well, the purpose of my examination, if the Examiner please, is that Mr. Christiansen has made some comparisons here——

Exam. Trezise: In asking him that question, what was the purpose?

Mr. Biaett: I am explaining that. He has made some comparisons here with Southern Illinois and Fulton-Peoria to Wisconsin, and that theory is one, of course, to which we do not subscribe, the manner in which he has done it. However, I wanted to point out that the rates which he shows on that exhibit show the same thing that the carriers are proving in this proceeding, that the rates from Fulton Peoria to destinations in Northern Illinois are on a lower level than the rates from Fulton-Peoria to destinations in Southern Wisconsin.

Exam. Trezise: Can't you put that in your brief? I don't want to carry this case too far. If you can avoid any questions by using an analysis of these exhibits in your brief, I think we will save time.

Mr. Biaett: That is all I have in that respect. I just want to point out a couple of points, Mr. Examiner. It would have been over a long time ago if Mr. Vesey had [fol. 2439] just borne with me a minute.

Exam. Trezise: That is all you have?

Mr. Biaett: No, I have another question.

By Mr. Biaett:

Q. Now, will you turn to your Exhibit 89, please.

A. Yes, sir.

Q. Now, on page 1 you show certain differentials, Western Kentucky over Southern Illinois?

A. Yes, sir.

Q. Can you tell me whether or not Benton is located in the Southern Illinois group?

A. It is.

Q. And is Mt. Vernon located in the Southern Illinois group?

A. No, sir.

Q. It is just north of the group, is it not?

A. That is right.

Q. Do you know if either Benton or Mt. Vernon or Mount Olive were involved in any of the proceedings in which the differential Western Kentucky over Southern Illinois was prescribed?

A. I don't think they were, and it doesn't make any difference, as far as this exhibit is concerned. This page of the exhibit merely shows as you approach the mines the differential at least does not decrease. It increases in every instance.

Q. I understand your theory, Mr. Christiansen. I just want to know if they are involved in the case and if you [fol. 2440] were attempting to show that those differentials had been prescribed by the Commission.

A. No, they were not, and if they were, they wouldn't have prescribed lower differentials to those points than to the points north.

Mr. Morgan: What case is counsel referring to?

Mr. Biaett: I was referring to Docket 16340, Docket 21838 and Docket 28629.

Exam. Trezise: We will let those answers stand, although I wouldn't say they are too complete. You have got two answers and then you have got two more answers.

By Mr. Biaett:

Q. Can you tell me what the differential is, Western Kentucky over Southern Illinois to Wisconsin?

A. 35 cents.

Q. And to Minnesota?

A. 35.

Q. And to North Dakota?

A. 35.

Q. And South Dakota?

A. 35 to the entire northwest territory.

Q. Now, referring to page 3 of your Exhibit 89, can you tell me if the differential 20 cents Rich Hill under Pittsburgh applies to Missouri River territory north of Kansas City?

A. It does, as I understand.

Q. How far north does that apply?

[fol. 2441] A. I think it is a large group.

Q. It applies to North Dakota, South Dakota, Minnesota, Nebraska, does it not?

A. The entire territory, yes.

Q. Now, on page 4 are there any points in this territory from Fulton County, or any suspended points, to which the distance from Fulton County is as low as that from Rich Hill to Kansas City or any of the other points which you show?

A. From Rich Hill?

Q. Yes.

A. No.

Mr. Biaett: That is all I have. Thank you, sir.

Exam. Trezise: If you have finished, we will take a short recess.

(Recess taken.)

Exam. Trezise: All right, gentlemen.

By Mr. Stadell:

Q. Mr. Christiansen, will you turn to page 4 of your exhibit No. 83, please.

A. Yes, sir.

Q. As I understand your testimony, it was that to this dark shaded portion of Southwestern Wisconsin lying west of Madison and Janesville, the differential Fulton-Peoria

under Southern Illinois became 79 cents on July 19, 1925, as the result of this so-called Hardie announcement?

A. Yes, sir.

Q. And the differential into that same portion of South- [fol. 2442] western Wisconsin, Southern Illinois over the Northern Illinois group, became $1.00?

A. That is right, except it included Beloit.

Q. Now, those same differentials were not established at that time between the Southern Illinois group, on the one hand, and the Northern Illinois and Fulton-Peoria groups, on the other, to the southeastern portion of Wisconsin lying east of Janesville and south of this shaded or dashed line which is shown on the map, page 4 of your exhibit 83?

A. No, sir.

Q. The differentials into that portion of Wisconsin at that time between those groups varied?

A. It did.

Q. And it does at the present time?

A. It does.

Q. Are the people that you represent satisfied with the present differentials between the Southern Illinois and other Illinois groups, on the one hand, and the Fulton-Peoria and Northern Illinois group, on the other, to that portion of Wisconsin?

A. No, sir.

Q. You think those also ought to be changed?

A. Yes, sir.

Q. And changed to what basis? The same basis as you are advocating to the southwestern portion of Wisconsin?

A. I haven't made an investigation there as to that par- [fol. 2443] ticular territory. It is going to have to fit in with the 40 cent differential that prevails at Milwaukee and the 40 cent differential at Milwaukee is made to correspond to the 40 cent differential at Chicago.

Q. And the 40 cent differential you refer to is between the Southern Illinois and Fulton-Peoria groups?

A. That is correct. In other words, the eastern part of Wisconsin, which is now not much of a market for Fulton County coal—in fact, can't sell practically any over in that Milwaukee territory—and as it moves from Milwaukee toward the mine today the Milwaukee differential is 40 cents, the differential at Waukesha, Fulton County under

Southern Illinois is 57 cents. As you get over to Janesville it is 79. It follows the normal trend, but in some way or other that differential adjustment will have to fit in with the 40 cent differential at Milwaukee, or the Milwaukee differential will have to change.

Q. But there is no way in this proceeding that you know of that the Interstate Commerce Commission could change the present differentials between the Fulton-Peoria and Northern Illinois groups, on the one hand, and the other Illinois groups, on the other, to that southeastern portion of Wisconsin?

A. No, sir, there is no complaint in this proceeding on that subject.

Q. Now, at Madison, Wisconsin, your present differen-
[fol. 2444] tial, Southern Illinois over Fulton-Peoria, is 61 cents, and Southern Illinois over Northern Illinois is $1.00. Are your people satisfied with those differentials or do you think they should also be changed?

A. They should be changed and there will be a complaint eventually.

Exam. Trezise: And there is no complaint in this case about it, and therefore, the Commission can't do anything about it. Now, are you going through some more of those over and over again?

Mr. Stadell: I want to find out, Mr. Examiner, if I can—Mr. Christiansen has testified at considerable length about the differentials to one point in Southern Wisconsin. Now, we have a great variety of differentials between these same groups to other points in the immediate territory in Southern Wisconsin, and I just wanted to find out if his people are satisfied with those differentials which are lower than to Beloit, which they are complaining about.

The Witness: We are not.

By Mr. Stadell:

Q. Now, I didn't get your position clearly on the point as to whether you thought the rates from the Fulton-Peoria district to the Northern Illinois points involved are short haul rates or whether there should be or is a definite differential relationship between the Fulton-Peoria rates, on the one hand, and the rates from the other groups in Illinois, Indiana, on the other?

[fol. 2445] A. I understand there is no fixed relationship today. Whether there should be or shouldn't be, I wouldn't say. It doesn't make any difference to us, just as long as the differential is 79 cents or better under Southern Illinois.

Q. 79 cents or better where?

A. At the Northern Illinois destinations.

Q. And you included that at all of the Northern Illinois destinations involved in this proceeding?

A. Yes, sir.

Q. In other words, you think there the differential should be uniform between the groups?

A. I didn't say uniform. I said it should be 79 cents or better.

Exam. Trezise: For a general difference in distance, or can you say just about what that is, from memory?

The Witness: Well, the distance varies from about 200 miles or 190 some miles to 230 miles in the territory as between Fulton County, on the one hand, and Southern Illinois, on the other, and the lesser the distance is for a much shorter haul, for instance, at Dixon, Illinois, as an illustration, and, of course, there the distance should receive more weight.

By Mr. Stadell:

Q. Your theory is, as I understand it, that differentials should be based upon the differences in distance between the groups involved, but that as the distance from those [fol. 2446] groups to a given destination increases and becomes a smaller percentage of the total distance, that the differentials should be lower than to the short haul points?

A. No, I don't think you have stated it right. Our theory is that as you approach the origin groups, come closer to them, in other words, the total distance diminishes as between two origin groups—not between the origin groups, but as the total distance diminishes as you move toward the origin groups, that the difference in distance, while it might be the same or it might be slightly less at one destination than another, or it might be slightly more at one destination than another, yet as you keep coming closer to the origin group it becomes more important. In other words, on a 300 mile haul, as an illustration, from Southern Illinois, with a 100 mile haul from Fulton County, the dis-

tance difference is 200 miles, that is two-thirds of the total distance. But on a 600 mile haul, that same 200 miles is only one-third of the distance.

Exam. Trezise: Are you talking about Illinois now?.

The Witness: No, I am talking about the general theory of making rates.

Exam. Trezise: Then you would include Indiana in that too?

The Witness: Oh, yes.

Mr. Stadell: Well, that is the same thing that I stated, except you stated it in the converse.

[fol. 2447] The Witness: Perhaps.

By Mr. Stadell:

Q. And on that theory, you say that if the 79 cent differential which you are advocating between Fulton-Peoria and Southern Illinois to Beloit is right, that the 85 cent differential between those groups to Minneapolis-St. Paul is wrong?

A. That is possible, yes, sir.

Q. Now, you would also say, would you not, that if it is proper to correct one of the differentials, such as you have suggested, Fulton-Peoria versus the other Illinois groups at Beloit, to restore them to the 1925 basis, that it would be equally proper to correct the differentials between, for example, the Northern Illinois groups, on the one hand, and the Southern Illinois group, on the other, at Janesville, which is now $1.30 and which in 1925 was made $1.00?

A. That Janesville rate, as I understand it, was prescribed as a reasonable maximum rate from Northern Illinois, and I don't see how you can change it.

Q. I am talking about your theory now of restoration of these differentials, irrespective of what rates were prescribed or anything else.

A. No. It is possible that on real short haul traffic that some of those rates might have been unreasonable, even with their $1.00 differential; in that case, they ought to be corrected, and they were corrected at Janesville, becaus[e] [fol. 2448] the Commission in that case prescribed the Janesville rate in the Northern Illinois District as a reasonable maximum rate. It just happened to equal $1.30 differential.

Q. You would know of no reason why the differential, Southern Illinois over Northern Illinois, should be $1.30 at Janesville and $1.00 at Beloit and $1.00 at Madison, Janesville being located directly intermediate between Beloit and Madison, would you?

A. No, sir.

Q. I believe you stated you were not present at this so-called conference which preceded the Hardie announcement in 1925?

A. That is right.

Q. Do you know who was present?

A. For our group?

Q. No, I mean for all of the parties to these proceedings.

A. No, I couldn't name all the people that were present.

Q. As I understand it, there were certain increased rates proposed and published by the railroads that were suspended prior to the time that conference was held, and that there was a complaint or two filed by some parties attacking some of the rates from Illinois mines to the territory involved?

A. I think that is right.

Q. And those tariffs containing those proposed increased rates were suspended by the Suspension Board of the Commission?

A. That is correct.

[fol. 2449] Q. And following that suspension this so-called conference was held between these undisclosed parties at Washington on April 10, 1925—the first page of your Exhibit 83?

A. Yes.

Q. And following that conference this announcement resulting in the changes in the then existing rates from the Illinois, Indiana groups and in the differentials between those groups was promulgated and the rates were changed from those which were in existence at that time?

A. That is correct.

Q. There was no public hearing before the Interstate Commerce Commission accorded any of the parties with respect to the rates involved or with respect to the changes which were made in the rates or differentials, was there?

A. I think not.

Q. Have you ever seen a transcript or any official report or record of what took place at that so-called conference?

A. No, sir.

Q. You do know, do you not, that many of the differentials which were in existence prior to July 19, 1925, between the Illinois groups, on the one hand, and the Indiana groups, on the other, to points in Northern Illinois and to points in Southern Wisconsin were changes as a result of the rates which the carriers ultimately published after this so-called Hardie announcement?

[fol. 2450] A. Yes, there were changes in many rates as a result of this announcement.

Q. And those changes resulted quite generally, did they not, in increasing the differentials theretofore existing between the Indiana groups, on the one hand, and the Illinois groups, on the other, to the Northern Illinois and Southern Wisconsin territory?

A. I didn't check out the Indiana and Illinois groups prior to July 19, 1925. I understand there were changes. I have seen some of those rates and comparisons, but I couldn't name a single point to where that change was made. There were changes, however.

Q. Now, the Illinois, Indiana, Western Kentucky coal mines comprise what is generally referred to as the Midwestern Coal Field, do they not?

A. That is correct, it could be called that.

Q. Somewhat the same as the mines in all of the eastern states are referred to as the Appalachian Coal Fields?

A. That is correct.

Q. Or the mines in Arkansas, Oklahoma, Kansas and Missouri are referred to as the Southwestern Coal Fields?

A. That is correct.

Q. Or the mines in Colorado, Wyoming and New Mexico are referred to as the Far Western Coal Fields?

A. Yes, sir.

[fol. 2451] Q. Now, in making rates you have stated that you had long experience in connection with the rates on coal. Isn't it true that the Commission in connection with the adjustment of rates from all of these other fields that I have referred to make the rates by selecting but one group as the base group and by making the rates from the farther distant groups by the addition of differentials over the base group?

A. There is generally one base group selected, and sometimes it is the nearby group or sometimes the far away group. I would say most of the times it is the nearby group.

Q. Wouldn't you say, based upon your experience, that if you have two fields and the nearby group is selected as the base group in one field, that it should be done from the other field, and if the farther distant group is selected as the base group that the same thing should be done from the other field?

A. I would think base groups ought to be comparable in distance.

Exam. Trezise: Do you know why, what reason you have differentials for at all? Why shouldn't there be a distance rate from every point?

The Witness: Well, differentials are made principally to give a farther away mine an opportunity to get into a market.

Exam. Trezise: For competitive reasons they have drawn the producing area closer together for the purpose of competition, is that your conception of it?

The Witness: That is correct.

[fol. 2452] Exam. Trezise: Go ahead.

By Mr. Stadell:

Q. Now, as I understand it, you are generally dissatisfied with the differentials or the rate adjustment that exists into Southern Wisconsin and Northern Illinois?

A. Beloit, Wisconsin, as far as this proceeding is concerned, Beloit, Wisconsin, and Northern Illinois.

Q. But I say, you are generally dissatisfied with the rate adjustment prevailing in the entire territory in Southern Wisconsin south of the cross-hatched line shown on the map, page 4 of your Exhibit 83?

A. Yes, I think there should be some ironing out of the hodge-podge differentials there and make it somewhere near uniform.

Q. And you have heard other witnesses in this proceeding express dissatisfaction with their rates and differentials to the Northern Illinois and Southern Wisconsin territory?

A. Yes, sir.

Q. Would you say that a part of that dissatisfaction results from the use of two so-called base groups from the Midwestern Field, one, the shortest or nearest distant group in Indiana, and the other, the longest distant group in Illinois?

A. Well, in so far as Fulton County is concerned, I would say that didn't have anything to do with our situation. It may have something to do with the general adjustment as between Illinois, on the one hand, and Indiana, on the other. I think it does.

[fol. 2453] Q. Well, can you conceive how a logical, reasonable adjustment of rates can be made on coal from the Midwestern Coal Field to Northern Illinois or Southern Wisconsin or all of Wisconsin, by the use of one base group for Indiana, using the nearest group to the destination territory, and by the use of one base group for Indiana, using the nearest group to the destination territory, and by the use of another group in Illinois, using the farther distant group in Illinois?

A. I can conceive such an adjustment could be properly worked out, but it would be more simple if they were both located either nearby or both located far away. It would be simpler to do it in that way. It could be done the other way, if you just go ahead and do it.

Q. Now, the Fulton-Peoria and Northern Illinois groups were the base groups, were they not, for the coal rate adjustment from Illinois, Indiana and Western Kentucky to Northern Illinois and the northwest from about 1887, the date of the Faithorn Award, until about 1920?

A. It was at one time the base group. I don't know exactly the dates.

Q. Then as the production of coal in the Fulton-Peoria and Northern Illinois District declined and the production of coal in and shipments of coal from the groups further south increased, the Commission, without changing the [fol. 2454] differentials, began to refer to Southern Illinois as the base group?

A. That is correct.

Q. Then later as new mines were put in operation in the Fulton-Peoria and Northern Illinois District, and the production of coal in that district and the shipment of coal from that district increased, the Commission in the Midland

Electric cases, with respect to the rates to all destinations in Iowa, reverted back to Fulton-Peoria as the base groups?

A. That is correct.

Q. And they prescribed a scale of rates from the Fulton-Peoria group and prescribed differentials from the other Illinois groups over the rates from the Fulton-Peoria group?

A. Yes, sir.

Q. And still later in the so-called South Dakota coal case they considered Fulton-Peoria as the base group?

A. Yes, sir.

Q. And then a little later they considered Fulton-Peoria the base group in the Fairbanks-Morse case for prescribing reasonable rates from Illinois, Indiana, West Kentucky to Janesville and Ft. Atkinson, Wisconsin?

A. Yes, sir.

Q. Now, the mines that are in operation at the present time or have been in operation for the past few years in the Fulton County, Northern Illinois district and in Knox County, are not the mines that were in operation in those [fols. 2455-2456] districts in 1925, are they?

A. No, they are not the same mines. There are mines in the Fulton County District, some of the mines that are in operation today were in operation in 1925.

Q. Well, outside of the mine of the United Electric Coal Company in the Fulton County District, can you name any mines that are in operation today that were in operation in 1925 at the time of this so-called Hardie announcement?

A. The Sherer Coal Company I think was in operation.

Q. Where is that located?

A. At Canton.

Q. Approximately what is its annual production?

A. About 130 or 140,000 tons a year.

Q. Is that the only one you can name?

A. There are several mines down there that were in existence at that time that are still running today, that I think have different names.

[fol. 2457] Exam. Trezise: We will let him answer that, if he can. I don't know how far we are going or where we are going.

The Witness: There are some of the mines that were in existence in 1925 that are still in existence. There are

others that have developed and there are some that are closed.

By Mr. Stadell:

Q. Well, the only one that you could name that is in existence at the present time, that was in existence and in operation in 1925, was the one that you named?

Mr. Vesey: I object to that, unless you put all that in, the whole history. Let us not have just part of it.

Exam. Trezise: You can answer the question.

The Witness: United Electric Coal Company was in existence in 1925. Scherer Bros., I understand, was in existence in 1925. The Illinois Collieries Company was in existence in 1925.

By Mr. Stadell:

Q. All of those mines you have named, except the mine of United Electric Coal Company, were shaft mines operating in a very thin seam of coal and with a very small annual production?

A. Yes, sir.

Q. And the mines that you have today in Fulton County, Knox County, Atkinson, and in Will County, the mines in those——

Mr. Cardy: Are you talking about Fulton County?

Mr. Stadell: If you have an objection, will you state it, and not break in on my questions?

[fol. 2458] Mr. Cardy: I thought you made a misstatement.

Mr. Stadell: The witness will tell me if I did. He can answer the question. We don't need your help. Miss Reporter, will you read my question as far as I got?

(Question read.)

Mr. Stadell: Strike that question. I will ask you this question directly.

By Mr. Stadell:

Q. The mine of the Midland Electric Coal Company at Atkinson was not in operation in 1925, was it?

A. No.

Q. It began operation about 1928 or 1929, didn't it?

A. Yes, sir.

Q. And it is then producing to the limit of its capacity with its equipment since that time every year, isn't it?

A. Yes, sir.

Q. The mine of the Little John Coal Company at Victoria, Illinois, in Knox County, began operation about 1936, didn't it?

A. Yes, sir.

Q. And it also has been producing to the limit of its capacity since it has been in operation?

A. No, sir.

Mr. Vesey: I object, unless the witness knows all these answers.

Mr. Stadell: You qualified him to answer the questions.

Mr. Vesey: As to knowing whether they are producing to [fols. 2459-2460] their full capacity, I don't think anybody can answer that.

Mr. Stadell: He remembers the testimony of the witnesses from those companies.

The Witness: No, sir.

Exam. Trezise: He has given the answer, "No, sir."

By Mr. Stadell:

Q. Could you tell us what the annual productive capacity of that mine was in 1941 and what was actually produced?

A. I don't have it here.

[fol. 2461] The Witness: I haven't the date the mines opened. They did not operate to capacity through any of the period up until 1942, we will say, or 1943.

By Mr. Stadell:

Q. And when you say they did not operate to capacity, you mean that considering 260 days, that is five days per week, 52 weeks per year, that they did not produce all of the coal that they could have produced?

A. They didn't operate 260 days, so naturally they couldn't produce all the coal they would have produced.

Q. You say they didn't operate?

A. No, sir. I think you will find if you go back and check [fol. 2462] the record, you will find many years when Truax

Traer Coal Company didn't operate 175 days a year. If you are talking about 1941, since the war started, you have got another picture.

Q. When did the mine of the Central States Collieries begin operating in the Fulton County District?

A. 1936, the first mine.

Q. And when did the mine of the Northern Illinois Coal Corporation begin operation at Bloomington, Illinois, in Will County?

A. 1929, I believe—1928.

Mr. Cardy: Now, are you on the complaint case or the 13th Section case or what?

Mr. Stadell: I understand his testimony is offered in the consolidated proceedings here.

Mr. Cardy: I understood you were dealing with the rates to Beloit.

Mr. Stadell: I am dealing with all of them.

By Mr. Stadell:

Q. Have the two associations that you represent any member company mines in Northern Illinois, other than the Northern Illinois Coal Corporation?

A. Yes, sir.

Q. In the Northern Illinois district?

A. Yes, sir.

Q. Would you give us the name of those?

A. Osage Coal Company, Wilmington Coal Mining Cor-
[fol. 2463] poration, Morris Coal Mining Company.

Q. Now, would you describe the mines of the Northern Illinois Coal Corporation—that is, the mine of the Northern Illinois Coal Corporation?

Mr. Vesey: I object to that. What are we going to do, have a description of a dipper or something like that in here? What has the description of a mine got to do with freight rates, whether it is big, little, small or indifferent?

Mr. Biaett: It is not a question of a reasonable freight rate. It is a question of the reasonable relationship in a freight rate.

Mr. Stadell: That is right.

Mr. Vesey: And I suppose the size of a mine has a bearing on the reasonable relationship?

Mr. Cardy: I object to the word "description".

By Mr. Stadell:

Q. I will ask you this, then, Mr. Christiansen, isn't it a fact that the mines of the United Electric Coal Company, Truax Traer Coal Company, Central States Collieries Company, Ayrshire-Patoka Company, and Northern Illinois Coal Corporation, all produce from 400,000 to a million two hundred thousand tons of coal a year?

A. It runs in the neighborhood of those figures.

Mr. Kaylor: I wonder if this isn't a pretty good place to adjourn.

Mr. Stadell: Yes.

[fol. 2464] Mr. Morgan: May I ask what the next program is going to be?

Exam. Trezise: As I have it here, Mr. Christiansen is being cross examined, and Mr. Scott is to be cross examined, or are you through?

Mr. Scott: I am through now, I think.

Mr. Morgan: I have one question of Mr. Scott.

Exam. Trezise: I think Mr. Scott will be able to answer your question. Then, Mr. Cardy, when are you coming on, Thursday?

Mr. Cardy: Well, I think I can put Mr. May on tomorrow.

Exam. Trezise: Off the record.

(Discussion outside the record.)

Exam. Trezise: Mr. Morgan, if you want to ask Mr. Scott those questions now, you may do so. All right, gentlemen, Mr. Morgan is going to ask a few questions before we adjourn, and we will adjourn then until 2:30.

(Witness excused.)

HAROLD V. SCOTT, resumed:

Cross examination (Continued).

By Mr. Morgan:

Q. At page 5 of your written statement of evidence, Mr. Scott, you stated that there is a substantial investment in coal mining property in Indiana, giving six million for Brazil-Clinton, twelve million for Linton-Sullivan, and the [fol. 2465] Ayrshire group thirteen million, and the Boon-

ville group three million, or a total of thirty-five million dollars.

A. That is approximately right. Boonville was three million five hundred thousand; a total of thirty-five million dollars.

Q. Well, it appears that is approximately right. What is the definition which you assign to an investment, in that instance?

A. Money which the operators have put into the coal mines they are operating.

Q. Did you verify that?

A. These records were given to me by the members of my association, whose figures I have no reason to doubt.

Q. Then you did not verify the figures in order to account for these figure-?

Mr. Wilkinson: Just answer yes or no.

The Witness: I didn't do it personally, no.

By Mr. Morgan:

Q. That is all I want. You don't know, do you, whether a lot of the figures might represent a mine, for example, which might at one time say be appraised at $1,000 and $100,000 worth of stock issued against it, do you?

Mr. Wilkinson: I object to that question. The witness said where he got his figures and how he got them, and that is all there is to it. You can ask a lot of hypothetical questions that he doesn't know and it adds nothing or takes nothing from his evidence.

Exam. Trezise: I think he can answer the question, if [fol. 2466] he understands it.

Mr. Morgan: I asked him whether he knew or didn't know.

The Witness: I haven't answered that last question yet.

Mr. Morgan: No. I was just stating what the question was.

The Witness: I don't know that, no, sir.

By Mr. Morgan:

Q. So your total of $35,000,000 is purely a figure which somebody else gave you, that is the substance of it, is it not?

A. I would like to amplify that, by stating, not what somebody else gave me, but what the members of my organization, for whom I work gave me, and I have no reason to doubt those figures.

Q. But you have no reason to know whether they are investments without having checked the actual investment accounts supporting those figures?

A. No, sir.

Mr. Wilkinson: I object to that.

Mr. Morgan: He has answered it.

Exam. Trezise: All right, we will let it stand the way it is. You don't know whether it is $35,000,000, so far as you are concerned, or not? You didn't check any figures, you didn't check the original cost of this or the amount of money put in it, the prudent investment, or anything of the kind; these are the figures that somebody gave you and that is about all you know about it, is that correct?

[fols. 2467-2468] The Witness: That is correct.

[fol. 2469] Afternoon Session.

The hearing was resumed pursuant to recess.

2:30 o'clock P. M.

Exam. Trezise: Gentlemen, when you are ready we will begin. Mr. Stadell.

A. J. Christiansen, resumed:

Cross examination (continued).

By Mr. Stadell:

Q. Some reference has been made in the evidence that has been presented to the Flamingo mine in the Fulton County district. Is that the mine operated by the Fairview Collieries Corporation?

A. Yes, sir.

Q. Now, taking the mine of the Midland Electric Coal Corporation at Atkinson, and taking 1941 as illustrative, that mine produced about 500,000 tons of coal, did it not?

A. Approximately.

Q. And approximately 85,000 tons of that was sold to the railroads serving the mine?

A. In 1941?

Q. Yes.

A. Yes, sir.

Q. And hasn't the practice of that mine been, or the company that operates it, to crush its coal to screenings sizes and sell the quantity which they have over, left over, after selling a certain amount to the railroad and using some of [fols. 2470-2475] it at the mine, to four or five large accounts, such as the Electric Utility Company at Cedar Rapids, Iowa, and the Corn Syrup Products Company at Clinton, Iowa?

A. No, sir.

[fol. 2476] Q. Well, could you tell us, for the year 1941, to what principal destinations the coal from the Atkinson group was shipped?

A. Yes.

Q. What were those destinations?

A. Principally the eastern part of the state of Iowa and the western part of the state of Illinois.

Q. You included in that Cedar Rapids, in the eastern part of Iowa?

A. Yes, sir. Some over towards the LaSalle district.

Q. Now, you participated in the Midland Electric cases, did you not?

A. Yes, sir.

Q. And you represented the mine at Atkinson and certain mines in the Fulton County district?

A. Yes, sir. The Midland Electric Coal Corporation was the complainant and I represented that company.

[fol. 2477] Q. Prior to the time that that was filed, the rates from Alpha and Atkinson to destinations in eastern Iowa were lower than and were not differentially related to the rates from the Fulton County and other Illinois groups, isn't that true?

A. The Atkinson rates to the Tri-City territory were originally fixed about the time the mine opened in 1929, and they were fixed lower than the Fulton County rates.

Q. Well, I am talking about the territory in eastern Iowa west of the Mississippi River.

A. I believe Atkinson had rates that were somewhat lower than Fulton County to some of the destinations. Alpha did not.

Q. And in its decision in the Midland Electric case, the Commission did not prescribe the same rates from Alpha and Atkinson as it did from Fulton-Peoria, except to destinations more than 130 miles west of the Mississippi River?

A. More than 100 miles west.

Q. More than 100 miles west?

A. That was the breaking point.

Q. And to the points within 100 miles west of the Mississippi River, the Commission prescribed rates from Atkinson and Alpha that were based on the Midland scale and which were not differentially related to the Fulton-Peoria or other Illinois rates?

A. They were not. They were different than the Fulton-Peoria and other Illinois rates. They were lower.

[fol. 2478] Q. Well, where was the——

A. They varied at each destination.

Q. At what distance west of the Mississippi River in Iowa was it that the Commission prescribed rates from Alpha and Atkinson on the one hand and from Fulton-Peoria on the other, that graded into each other?

A. They run slightly over a hundred miles west of the Mississippi River.

Q. So that to destinations in eastern Iowa within 100 miles west of the Mississippi River, Alpha and Atkinson are not included within the Fulton-Peoria group?

A. No, they are lower.

Q. But to destinations more than a hundred miles west of the Mississippi River, Alpha and Atkinson are in the Fulton-Peoria group?

A. That is right.

Q. And take the same rates?

A. That is correct.

Q. Now, I asked you before if you thought that the Commission would establish a logical or proper rate adjustment on coal from the various origin groups, Illinois, Indiana and Western Kentucky to Northern Illinois, or to Southern Wisconsin, by using, as some of the parties advocate, two base groups, one the nearest group in Indiana and, two, the farthest distant group, namely, the Southern Illinois

group in Illinois, and you said it would be possible to do so. [fol. 2479] Would it be better, in your opinion, if they used but one base group to establish and readjust such a rate adjustment?

A. Well, it would be simpler to use one base group or to use a base group in each district, both of them located the nearest.

By Exam. Trezise:

Q. Why would it be simpler?

A. Well, you would start out then with a level of rates from each of the base groups or from the base groups and build over that level of rates.

Q. Oh, you think it is done differently from that now?

A. Well, the result is perhaps a little different.

Q. Oh, the results, you get different rates from the groups, is that the idea? What difference does it make? That is what I would like to know. Pardon me for asking that.

A. Well, if you are measuring levels of rates from the nearby group in one territory and figure out what is a reasonable level of rates, based on the shorter mileage, then you take another territory and take the farthest away group and figure out what might be a reasonable rate from that particular group, you can't fit the two together. I mean you are comparing unlike with unlike.

Q. Oh, then you come to the conclusion, by inference, anyhow, that if you call one a base group and another one a differential group, that the charge for transportation, even if the distances are the same from the respective [fol. 2480] groups, the charges for transportation would be different?

A. They shouldn't be.

Q. What is that?

A. They shouldn't be but they are in some instances.

Q. All right. Then what you do say is by calling one group a base group and the other one a like distance a differential group, you get a disparity that would not exist between the rates if you called each of them of like distance the base group.

A. I think that is true. You shouldn't but you do. You shouldn't get a difference but you do.

By Mr. Sadell:

Q. So that your judgment is that if the Commission, assuming that they have a proper record, is to bring any order out of what you referred to as the present hodge-podge adjustment of rates from the Midwestern field to Northern Illinois or Southern Wisconsin, would logically have to start with the use of one group as the base group and the use of differentials from the other groups over whatever the differentials may be over that base group—as they did in the Midland Electric case?

A. I think that would simplify it.

By Exam. Trezise:

Q. You say they did in the Midland case. Do you realize what that would mean, if you undertook to do substantially what they did in the Midland case? Do you know that for differences of distance of 150 to 190 miles, the [fol. 2481] differential of 50 to 55 cents was prescribed in the Midland case; whereas you have from Indiana, the difference in distance to Rockford, for example, the Boonville group over the Brazil-Clinton, as I figure it, anyhow, is 162 miles. One exhibit here, Exhibit No. 52, shows that there is a difference of 15 cents; not 50 or 55 but 15 cents.

A. I don't know where, what particular distances you are referring to as 150 to 190 miles——

Q. Going to Rockford.

A. For a 50 cent differential. I would have to ask what differentials you had in mind. Is that between Springfield and Northern Illinois or is it Southern Illinois and Northern Illinois or what?

Q. Well, I hope you were listening. I said Boonville over Brazil-Clinton.

A. I am talking about the ones you are talking about in the Midland case.

Q. Oh.

A. From 150 to 190 miles for 50 to 55 cents; what particular territory you are referring to there; surely not over Fulton County.

Q. No, not over Fulton County, but my question, as I gave it there, had to do with Revised Appendix C in the Midland case, the third report, which is 232 ICC 5; and

take my word for it, glance over all the various groups and you will find that 50 and 55 cent differentials or differences [fol. 2482] as shown in that appendix will generally apply for differences of 150, I said, to about 190 miles. You will find those differentials prescribed in there.

A. That is, Fulton-Peoria under Boonville. There are some differentials here from 50 to 55 cents.

Q. All right. I am only pointing out that it is a differential.

A. That is right.

Q. And my statement is substantially correct, anyhow; it may not be to the very great detail, but that is true; and now when you come over here to the Indiana group, we find a difference in distance, Boonville over the Brazil-Clinton, going to Rockford, for example, a difference in distance of 161 miles, and the difference in rates, as I figure it, is 15 cents. How are we going to take care of a situation of that kind? Wouldn't we have to have some sort of a metamorphosis, an evolution or a revolution in all of these Indiana rates to bring about the same sort of a relationship?

A. The rate that I find here as proposed from Boonville to Rockford is $2.27, and the rate that I find proposed from Brazil-Clinton is $1.95, so there is 32 cents, at least, in that differential instead of 15 that you referred to.

Mr. Scott: Is that true, Mr. Christiansen?

By Exam. Trezise:

Q. You mean if you pick out proposed rates rather than accepting the Examiner's statement?

[fol. 2483] A. I don't——

Q. Yes, you can find just what you found, but I asked you if you can find what I found?

A. No, I can't find what you found.

Exam. Trezise: Off the record.

(Discussion outside the record.)

Exam. Trezise: Back on the record.

The Witness: Yes, there is a 15 cent differential there as between the present rate.

Exam. Trezise: And the difference in distance is 162 miles?

A. That is right.

Q. And over here, when you get in not only the Midland case but when you begin to figure the difference between the rates or differentials from Illinois going to Northern Illinois, you will find likewise the same magnitude in these differentials as compared with Indiana?

A. They are inconsistent.

Q. And when we take the Midland case and we find for 70, 80 or 90 miles—and please take my word for that, as hypothetical, anyhow—we have a differential prescribed of 20 cents.

A. I believe there are some of those.

Q. In the appendix to the Midland case, the third report, the one that I referred to, Appendix C, I think that you will find 20 cents for those distances. When you come over [fol. 2484] to the Indiana group you will find for a difference of distance of 60 miles a difference of 3 cents.

A. I believe that is correct. You will find those inconsistencies.

Q. And when you get to 75 miles over here in Indiana, you will find a differential not of 20 cents, as in the Midland case, but a differential of 7 cents?

A. I believe that is correct, too.

Q. And I was just trying to find out what you meant when you said that. The question seemed to have been a logical adjustment. I think you said a logical adjustment.

Mr. Stadell: Logical and reasonable. More proper.

Exam Trezise: Proper.

Mr. Stadell: Lawful.

By Exam. Trezise:

Q. Now, Mr. Christiansen, how would you go about to make a logical or proper or reasonable relationship of rates when you find such a chaotic condition as that?

A. I would say it was a most difficult task.

Q. Oh, it is a difficult task. I see. That is your answer?

A. Probably——

By Mr. Kaylor:

Q. You don't advocate a mileage scale, do you?

A. No, sir.

Exam. Trezise: Pardon me, Mr. Stadell. Go ahead with your examination.

Mr. Stadell: That is all right.

[fol. 2485] Exam. Trezise: I just wanted to know what he meant when he answered you so readily, and now he answers me, it is a difficult thing to do.

The Witness: I think myself, Mr. Examiner, that it would probably be easier if you had just one base group to start from or if you had the nearest group in each of the two fields as a base group to start from and build over that, that it might be an easier problem. I don't know; maybe it isn't.

Mr. Vesey: Could I ask one question there?

Mr. Stadell: Go ahead.

By Mr. Vesey:

Q. Would the procedure of simplification, Mr. Christiansen, be facilitated by establishing first proper differentials between the Illinois groups?

A. It would.

By Exam. Trezise:

Q. Then what would you do? Would you follow along and use the same sort of principles from Indiana as was followed in the Midland case?

A. I think that Indiana can be fitted into Illinois, once Illinois is properly lined up.

By Mr. Stadell:

Q. Well, do we understand from all the testimony that you have presented here that your complaint with respect to the relationship Fulton County versus the other groups is directed not only to the relationship between the rates from the Fulton County group on the one hand and the other Illinois groups on the other, but also to the relation-

[fol. 2486] ship between the rates from Fulton County, Fulton-Peoria on the one hand and Indiana on the other?

A. It is directed against all the origin groups to the south.

Mr. Biaett: Just a minute. Are you referring to his complaint case?

Mr. Stadell: I am referring to his testimony in this case, where he is asking for changes in the relationship, as I understand it, Mr. Biaett.

Mr. Biaett: To Northern Illinois?

Mr. Stadell: Yes, that is right.

By Mr. Stadell:

Q. Do you know of any reason why the differentials between the Fulton-Peoria group on the one hand and the other Illinois groups on the other, or between the Indiana groups themselves to this territory, should be made on a different basis or on a different principle?

A. No. Our proposal is that inasmuch as Southern Illinois is the base group as far as Illinois is concerned, we would be properly lined up with Southern Illinois. Now, if the Indiana groups are out of line with the Illinois groups, or with Southern Illinois, inasmuch as Brazil-Clinton in Indiana is the base group in Indiana and the Southern Illinois group is the base group in Illinois at the present time, that if they are properly lined up with Southern Illinois and we are properly lined up with Southern Illinois, we will automatically be properly lined up with Indiana.

[fol. 2487] By Exam. Trezise:

Q. Well, with respect to that, now, there would not need to be very many changes made in the rates to bring that about, or would you put it in those terms? Do you think there would or wouldn't?

A. It wouldn't take many. As far as Fulton County is concerned, all that is necessary is to make the Fulton County differential to this Northern Illinois territory 79 cents or greater under Southern Illinois, and we are lined up automatically with Brazil-Clinton.

Q. That is your panacea of all ills?

A. As far as we are concerned it is.

By Mr. Stadell:

Q. Do you know of any conditions that would justify a greater differential Southern Illinois or Belleville over the Fulton-Peoria group for a difference in distance, we will say, of 200 miles than Princeton, Indiana group over Fulton-Peoria, for a difference in distance of 225 miles?

A. I know of none. There might be some. I know of none.

Q. But you have heard of none in this proceeding so far?

A. I haven't heard of any.

Q. And would your answer be the same if I asked you with respect to the Boonville, Indiana group versus Fulton-Peoria on the one hand and the Belleville versus Fulton-Peoria group on the other?

A. I know of none.

Q. Do you think the differentials between the various [fol. 2488] Illinois-Indiana groups on the one hand and Fulton-Peoria on the other should be the same to Rockford and Freeport as they are to Beloit?

A. At least the same or greater.

Q. And should they be the same to Madison as to Rockford and Freeport?

A. Madison might well fit into the rate adjustment, just to the north of it, which has a 70 cent differential. I haven't studied Madison but I will say this, that there is going to be a complaint to Madison.

Q. Providing you win your case here?

A. Well, there will be one anyhow.

Exam. Trezise: Off the record.

(Discussion outside the record.)

Exam. Trezise: Proceed, Mr. Stadell.

By Mr. Stadell:

Q. On your Exhibit No. 87, Mr. Christiansen, you show the average mileages from the Fulton County group to the twelve representative Northern Illinois points, first including the mileage to Belvidere and then excluding the mileage to Belvidere. Why did you exclude Belvidere?

A. The carriers, the North Western Railroad, abandoned a piece of track, I believe it is near Sycamore, which had

the effect of increasing the mileage from the Fulton-Peoria district and from the Illinois districts that move via that North Western route 50 miles exactly from each origin group, each origin point, and we felt that Belvidere should [fol. 2489] be eliminated as one of the points in ascertaining an average mileage for these twelve or thirteen representative destination points, because it was the carriers' own idea to abandon this piece of track, and we don't think that an abandonment should justify an increase in the level of rates. It was for their convenience they abandoned this piece of track.

Q. Coal moving to these points from the Indiana mines did not move over that portion of the track that was abandoned?

A. No, sir.

Q. Before?

A. No, sir.

Q. And therefore the mileages from Indiana to these representative Northern Illinois points would not be increased by the abandonment of that line as were the mileages from Illinois mines?

A. That is correct.

Q. I notice you have on this Exhibit No. 87 the average mileage from the Fulton-Peoria group to the twelve representative points and the average rates. Can you tell us how you arrived at the average mileages and average rates shown on there from Fulton-Peoria to those twelve points?

A. This is the weighted average. We took each destination, and if there was rates from twelve origin points, as shown on line No. 1 to Amboy, we took the total mileage: [fol. 2490] we also took the total rate. We did it for each of the other ones, added the group together and divided it by the total number of points in the group, both the rate and the mileage.

By Exam. Trezise:

Q. And that has nothing to do with the tonnage?

A. No, sir.

By Mr. Stadell:

Q. What you meant by "weighted" is that you took the rate from every origin in the Fulton County group to

each of these destinations? You took the mileage via the route via which that rate applies and you added those up and divided by the total number of origin points?

A. That is right.

Q. Or for the total number of rates?

A. Or routes.

Q. And what you meant in these average rates and average mileages by "weighted" was that they were weighted by or gave consideration to the number of origin points, the total number of rates and the total number of mileages?

A. Yes, sir, using a rate for every route, even though it was the same rate.

Q. Now, have you ascertained how the average rates from Illinois, from the Illinois and Indiana mines to the Northern Illinois points shown in Mr. Scott's Exhibit No. 73 and certain other of his exhibits were arrived at?

A. I checked 73.

[fol. 2491] Q. Were the average rates shown in that exhibit from Illinois and Indiana to the Northern Illinois territory involved, arrived at in the same way or by the same method that you used in arriving at the average rates shown in your Exhibit No. 87?

A. They were not.

Q. Were they arrived at, the average rates shown on Exhibit No. 73, merely by taking the rate from each group and the average mileage where there weren't different rates and arriving at a simple average?

A. Their rates on the exhibit were secured by what might be determined a simple average. They went just one step further than a simple average. For instance, if Southern Illinois had two rates, they used two rates instead of one rate for 75 origin points or routes. To that extent they have not even a simple average.

As an illustration, to the twelve destinations they have thirteen rates from Southern Illinois, thirteen rates for each of the origin points; but on the mileage, they have 882 mileages.

Q. And had they computed the average rates from Southern Illinois in Exhibit 73 as you have from Fulton County in Exhibit 87, they would have had 75 origins and 75 rates to each of the twelve destinations, would they not?

A. That is correct, and that is the only way that you can make a comparison when you are comparing two different factors.

[fol. 2492] Q. What in your opinion is the value of the average rate comparisons contained in Witness Scott's Exhibit 73 and the other exhibits presented by him, in which such average rates are shown?

A. Well, I didn't check the other exhibits, but as far as 73 is concerned, it shows nothing, because it isn't any kind of a calculation that any weight could be given whatever.

Q. Now, we heard considerable testimony in these proceedings about the tremendous sacredness of certain differentials or certain differences in rates between certain groups merely because somebody said they had been in effect for ten, fifteen years. Didn't the Commission in the Midland case change a considerable number of the differentials previously existing between the Illinois groups where they found that they were wrong?

A. They did.

By Exam. Trezise:

Q. On what theory do you think they changed them?

A. I don't know.

Q. Could it possibly have been any difference in mileage?

A. No, sir, it probably wasn't.

Q. Did they fix any differential that made the rates higher from the farthest distant group to the nearer groups?

A. No, sir.

By Mr. Stadell:

Q. Do you know of any case where the Commission has [fol. 2493] ever adopted the reverse theory of making differentials by giving the group with the longest haul a differential under the group with a shorter haul?

A. I don't know of any.

Q. Now, you referred to the going rates as being the rates that would move the traffic from any particular mine or origin point in a given group. That wouldn't be universally true, would it? What I have in mind is where you have a rate of, say, 90 cents from an origin point in the Northern Illinois group like Minonk or LaSalle and a

rate of a dollar from the large mine of the Illinois Coal Corporation.

A. It would be true if there was any coal produced at these other points.

Q. Well, you don't mean to say, do you, that the Northern Illinois Coal Corporation, despite the 10 cent difference in rate, wouldn't be actively soliciting business at the particular destination and trying to ship it in there?

A. They would be trying——

Mr. Cardy: I object to that.

Mr. Stadell: I beg your pardon?

Mr. Cardy: I object to that. Just a minute. I don't see any——

Mr. Stadell: On what grounds?

Mr. Cardy: I don't see how that can be material, whether we solicit coal on the basis of 10 or 15 cent differential. [fol. 2494] There may be many other reasons why we do or do not solicit business.

Exam. Trezise: I think if he knows the answer to that—do you know the answer, Mr. Christiansen?

The Witness: I think they would be trying to sell.

Exam. Trezise: I beg your pardon.

The Witness: I think they would be trying to sell.

By Mr. Stadell:

Q. And you know of movements, don't you, where they would sell and ship the coal from their mine to a given destination as against the rate from another origin having a slightly lower rate?

A. No, I don't know; in Northern Illinois.

By Mr. Kaylor:

Q. Do you know whether the Minonk mine is operating?

A. There is a mine there that is 99 per cent, I would say, truck.

Q. Do you know whether the LaSalle mine is operating?

A. I don't believe they are right now.

Mr. Kaylor: I see.

By Mr. Stadell:

Q. Did you hear the testimony of the railroad witnesses in these proceedings that it was their view that if they increased Illinois rates, as is proposed, that there would be no loss of tonnage from the Illinois mines to truck?

A. Yes, sir.

[fol. 2495] Q. What if anything have you to say about that?

A. Well, to the southern part of this territory, I think after the war there is going to be considerable trucking.

Q. Well, has there been trucking of coal from these mines up in Northern Illinois—from the northern portion of Illinois to the territory involved, in the past?

A. Some, yes. I think it is going to increase substantially.

By Mr. Cardy:

Q. What is that, Mr. Christiansen?

A. I think it is going to increase substantially.

By Mr. Biaett:

Q. Those are mines in Northern Illinois you are talking about?

A. Northern Illinois and Atkinson. Atkinson is located quite close to Dixon by road.

Q. Those are short-haul movements?

A. Yes.

By Mr. Kaylor:

Q. By "short haul" do you mean up to 50 miles?

A. From Atkinson and Sheffield—there is a new mine at Sheffield, truck mine—to this southern part of the so-called affected territory, that is Dixon and Amboy, is, I would say, within a 50-mile haul by road, although the railroad mileage is 125 or better.

By Mr. Vesey:

Q. Mr. Christiansen, along that line, didn't you find during your investigation preliminary to your testifying in General Docket 15 before the Coal Division, that the normal area over which truck coal moves is ranging up to 79 [fol. 2496] miles from the mine?

A. The big movement is 70 miles but it is increasing each year.

By Exam. Trezise:

Q. What is increasing?

A. The range in which it can move. For instance, ten years ago they figured that you couldn't move it much more than 25 miles, and improvements in truck, improvements in roads adds another 15 or 20 miles. Better mileage on gasoline, trucks, heavier loads, adds another 15 or 20 miles, and now they are up, I would say, the biggest, the greater part of the movement is within 70 or 75 miles.

After the war we are going into lighter-weight equipment; some of the developments are going in where you are going to haul coal 120, 125 miles. There is a substantial movement of coal today from the Fulton-Peoria district to the Tri-Cities, which is a hundred miles.

By Mr. Vesey:

Q. You spent, did you not, a number of months at my insistence in making a study of truck movements within the state of Illinois during the early part of 1939; the latter part of 1939 and the early part of 1940, didn't you?

A. We made quite an investigation, yes, sir.

Q. And you covered all the trucking areas in the state in that investigation?

A. Principally in the Northern Illinois territory, or Fulton-Peoria, Atkinson, Northern Illinois.

By Mr. Hunter:

Q. Was that trucking performed by the coal producer or [fol. 2497] by a common carrier, contract carrier trucks, do you know?

A. It is performed in most instances by what might be termed contract carriers, although there is a question as to whether they are contract carriers. They buy the coal and sell it. They may be dealers.

By Mr. Bather:

Q. Mr. Christiansen, wasn't there a heavy movement of coal from Minonk into Rockford and Freeport from that mine there?

A. I don't know about the Minonk mine. There is a truck mine at Minonk that sells most of their output to trucks.

By Mr. Kaylor:

Q. Well, did you answer Mr. Vesey? He asked you if you made an extensive investigation and you said you had, but outside of that you didn't tell us what it consisted of with reference to miles hauled by truck and the amount of movement, or such as that.

A. Well, I can't give you any figures now; I don't have them right handy; but I did testify that the larger—or most of the movement by truck was within 70 or 75 mile radius today, or was up to the time the war began. When the war began and the people that did the trucking could get better jobs, they quit hauling by truck, and I would say today it isn't as substantial as it was three years ago; but when the war is over, with the improved equipment that we can expect, perhaps Diesel motors, light aluminum bodies on the truck, and instead of having a 15,000 pound [fol. 2498] truck we will have a 5,000 pound truck, which means 10,000 pounds more pay load, that it will extend out and there is going to be a big increase in the trucking movement of coal.

Q. Did you find in this investigation whether or not any regulatory body had any jurisdiction of the rates of these truck haulers?

A. None had, in Illinois.

Mr. Kaylor: That is what I am speaking of, Illinois.

By Exam. Trezise:

Q. Well, would you say that if these rates were increased from Fulton-Peoria, Alpha and Atkinson to this Northern Illinois territory, that there would be increased trucking or would be a tendency to increase the trucking of coal?

A. There would be a tendency to increase because every time you add 15 cents on to a rate you just widen the radius in which the trucks can operate. If they can get 15 cents more they can go out another five or ten miles and can take in that many more communities every time you widen the circle.

Q. You mean that it would increase to destinations that are 70 miles away?

A. Yes, it would. It wouldn't increase it—it would increase to those destinations, the amount of trucking. It would increase the radius to, say, 75 or 80 miles and take in some other destinations.

[fol. 2499] Q. You mean, then, that there might be an increased trucking, under normal conditions, anyhow, to destinations beyond this 70 miles as indicated, possibly, by your exhibits here, that the distances are such that the trucking might be increased?

A. Yes. The trucking might be increased to the individual points that are already within, we will say, the 70-mile distance by road and the area or the radius of the distance would also be increased.

Exam. Trezise: Go ahead.

By Mr. Stadell:

Q. On page 8 of your prepared statement, you refer to the fact or to your contention, "The rates from the Northern Illinois group to the Northern Illinois points involved are short-haul rates." What do you mean by "short-haul rates"?

A. Well, that is a hard description to make. It is generally considered in Illinois that short-haul rates are up to about 130 miles. That seems to have been the cutting-off place. However, there are some of the districts where it doesn't extend out that far.

Now, the Springfield district, you have a fixed differential when you get north of Bloomington, as an illustration, and that is not 130 miles from the Springfield district; so short-haul rates can be anything. However, from the Northern Illinois district to this territory, other than Beloit, the rate seems to be on a point-to-point basis. In other words, [fol. 2500] LaSalle has got one rate, Minonk has got another, Wilmington has got another, Ottawa has another, and there seems to be pretty much a hodge-podge of point-to-point rates.

Now, that, I think, would be considered really short haul. When you get into Beloit, Wisconsin, as an illustration, the Northern Illinois group has the same rate to Beloit. The Northern Illinois rate is $1.40.

By Mr. Cardy:

Q. In other words——

A. That distance is 125 mile average, so there we hit a point where perhaps it becomes a going rate at 125 miles.

Q. Right there, Mr. Christiansen, would you say the Illinois-Wisconsin line might be the dividing line for the short haul rates to points in Northern Illinois?

A. From the Northern Illinois origin group, yes.

By Mr. Bather:

Q. Isn't it a fact, Mr. Christiansen, that the rates to Northern Illinois——

Mr. Vesey: Just a minute, Mr. Bather. May we have that last question and answer read, please Miss Reporter?

(Record read.)

Mr. Vesey: I move to strike the question and answer. Obviously, the question as read by the reporter is a misstatement. We couldn't have the Wisconsin line as a dividing line for Northern Illinois points.

By Mr. Cardy:

Q. Well, approximately. In other words, when you get into Wisconsin, you have a differential adjustment between [fol. 2501] Northern Illinois; and in Northern Illinois you have not a differential adjustment from Northern Illinois to those points, isn't that true?

A. That is substantially correct.

Mr. Cardy: All right.

By Mr. Bather:

Q. Mr. Christiansen, isn't it is a fact that the rate from Northern Illinois to Beloit is based on a differential of $1.00 under Southern Illinois?

A. I don't think it was. I think you will find that the Northern Illinois rate to Beloit was prescribed as a reasonable maximum rate by the Interstate Commerce Commission, and it just happened that the Southern Illinois rate is a dollar greater.

Q. Well, in the original Fairbanks-Morse case, didn't the Commission fix the differential at $1.00 under the Southern

Illinois rate? I am speaking of when the differential between Rockford and Beloit was made 25 cents?

A. I don't think so.

Mr. Bather: The decision will speak for itself. That is my understanding of it, when the adjustment was made.

Exam. Trezise: Off the record.

(Discussion outside the record.)

Exam. Trezise: Go ahead, Mr. Stadell.

By Mr. Stadell:

Q. Well, you are complaining, as I understand it, about the present relationship between the rates from the Fulton-[fol. 2502] Peoria group on the one hand and the Northern Illinois group on the other to these Northern Illinois points?

A. No, I merely point out what the differential is between the two groups for that short mileage.

Q. You mean that you are not seeking any change in that relationship in these proceedings?

A. I haven't asked that they change the Northern Illinois differential in any way. If they fix the differentials for the districts to the south, the Northern Illinois differential will remain as it is.

Q. That is as compared with the rates from Fulton County?

A. That is right.

Q. And you are satisfied to leave that differential or difference between the present rates from Northern Illinois and Fulton County as it is now?

Mr. Vesey: What you mean by that is you are making no objection to it now?

By Mr. Stadell,

Q. Well, you are making no objection; I assume you are satisfied with it?

A. We wouldn't be satisfied with that differential if anything like the present differential Southern Illinois over Fulton County prevailed.

Q. But even if the differentials between Fulton County and all of these other Illinois groups south are changed, as

you have suggested, you are still not seeking in these pro-
[fol. 2503] ceedings any change in the present differences or differentials between the rates to Northern Illinois from the Fulton-Peoria group on the one hand and the Northern Illinois group on the other?

A. No, sir; other than if, for instance, in changing this differential it is necessary to reduce the Fulton-Peoria group, which we think it should be, then it will automatically reduce our relationship with Northern Illinois by that difference.

Q. I understand from your last answer, then, that your theory is that the present rates from the Fulton-Peoria group to Rockford and Freeport and these other Northern Illinois points are unreasonably high and that the differentials that you request be established, Fulton-Peoria versus these Illinois groups, be established by reducing the Fulton-Peoria rates?

A. Yes, sir. That is one way to do it.

Q. Now, you referred to certain short haul rates from the Springfield, Illinois district to points in Illinois. Aren't those rates, or weren't they established to meet truck competition?

A. They might have been, I don't know, if they are there; some of them probably were.

Mr. Kaylor: From the Springfield group to Illinois?

Mr. Stadell: To short-haul destinations in Illinois.

Mr. Kaylor: They would then be in the Springfield group.

Mr. Stadell: No, it is outside the Springfield group.

Exam. Trezise: You didn't mean from the Springfield
[fol. 2504] group at Peoria where the Interstate Commerce Commission prescribed——

Mr. Stadell: No, he referred in his prepared statement to certain rates from certain origins in the Springfield group to what he described as short-haul destinations in Illinois, either east or north of the Springfield group, and my question was, aren't those rates so-called truck competitive rates that have been established by the railroads voluntarily to meet truck competition from the particular origin group to the particular destination to which they apply?

The Witness: I don't know whether they were established to meet truck competition and how much they were reduced to meet that truck competition.

Mr. Vesey: You don't know; that is all.

The Witness: The reference to——

Mr. Vesey: Wait a minute. That is all, you don't know.

The Witness: I wanted to explain why we used them. The relation to the short-haul rates in the Springfield group was used merely to show as you come closer to the mine, the difference between origin groups increased.

By Mr. Stadell:

Q. Regardless of whether the rates you use were the normal rates or truck competitive rates that had been reduced below the normal rates?

A. If they were normal rates they still increased.

Q. Now, in your Exhibit No. 89, page 6, which is a map, you show what you say are the differentials or differences [fol. 2505] between the rates from the Springfield, Illinois group on the one hand and the Southern Illinois group on the other to destinations in Illinois, Wisconsin, Iowa and other northwestern states.

A. That is right.

Q. Now, the differential, difference in rate that you show, for example, of 90 cents at Bloomington between those two groups is not in any sense the differential; it is merely a difference that results in whatever rates happen to have been established from those two groups?

A. Yes, sir, that is the point. It shows there is an increase in that difference as you approach the mine.

Q. Is that true?

A. Yes.

Q. You have got 91 cents at Bloomington and then you get over to Whitehall, it is 56 cents.

A. You are coming from a different direction from Whitehall. To go out into Missouri, which is not shown on here, you would have some 20 cents difference in Missouri; you have 40 cents at Quincy and 56 at Roodhouse; so it shows still an increase as you approach the mine.

Q. Then it depends on which direction you are going as to what the difference is?

A. Yes, because there you are going in a northerly direction and the Southern Illinois is coming north. From the north you are coming straight south towards the South-
[fol. 2506] ern Illinois district, to the Springfield. Now, when you come in from the northwest, you come in with Shenandoah 20 cents, Fort Madison, Iowa, 40 cents and Beardstown, 87.

Q. That is the same theory that you followed in the preparation of the map shown on page 1 of your Exhibit No. 89, showing the differences between the rates from the Western Kentucky group on the one hand and the Southern Illinois group on the other?

A. Yes, sir.

Q. To your knowledge, the Interstate Commerce Commission has never prescribed or approved the differences in rates that you show on this map, page 1 of your Exhibit 89, of 47½ cents Western Kentucky over Southern Illinois group at Mount Vernon or $1.14 Western Kentucky over the Southern Illinois group at Benton, Illinois, rather?

A. No, I have never—I haven't checked it to see whether they did approve it. If they did, I know they wouldn't prescribe a 35 cent differential.

Q. You were asked a question about the rates to Clinton, Iowa, as to whether they were prescribed in the Midland case from the Illinois mines. Were the rates from the Illinois mines to Clinton involved in that case?

A. They were not.

Q. You made some comparisons on the diminishing, your diminishing theory of rates between the Spadra Arkansas
[fol. 2507] group on the one hand and the Pittsburg, Kansas group on the other. The coal produced in the Pittsburg, Kansas and Rich Hill, Missouri group is bituminous coal, isn't it?

A. Yes, sir.

Q. And in the Spadra group it is semi anthracite, isn't it?

A. Well, they call it semi anthracite. The Coal Division found it was bituminous.

By Mr. Kaylor:

Q. Would there be any difference in the way the tariff prescribed them as to the rate?

A. No, there isn't.

By Mr. Stadell:

Q. It is generally sold to the trade as semi anthracite, isn't it, this Spadra coal?

A. I don't know how they sell it.

Mr. Stadell: That is all I have. Thank you.

Mr. Vesey: I have some redirect if there is no other cross.

Exam. Trezise: Any further questions on cross examination?

Mr. Bather: One question:

By Mr. Bather:

Q. Mr. Christiansen, is there any movement of coal from Spadra, Arkansas, or the Pittsburg, Kansas district to the affected territory?

A. No, sir.

Mr. Bather: That is all.

Mr. Stadell: I would just like to ask one or two other questions, if you don't mind.

[fol. 2508] Exam. Trezise: Mr. Stadell.

By Mr. Stadell:

Q. You are familiar with the freight adjustment from the southwestern mines into the territory—take Nebraska, for example.

A. Well, in a general way, yes.

Q. What is the base group in that adjustment?

A. Pittsburg, Kansas, I think is the base group.

Q. And that is the nearest group to the destination territory?

A. Well, Rich Hill is perhaps a little closer. They are adjoining each other; almost abutting against each other.

Q. Does the Rich Hill district take the same rates as the Pittsburg district?

A. I don't know.

Mr. Stadell: That is all.

Redirect examination.

By Mr. Vesey:

Q. Mr. Christiansen, you were queried at some length by Mr. Stadell with respect to the marketing of Fulton-Peoria coal. Did you or did you not make a detailed investigation of the distribution of those coals in connection with your testimony in the Midland Electric case?

A. Yes, sir.

Q. And was there or was there not an exhibit introduced in that case which was prepared by the Southern Illinois operators which showed the distribution of Southern Illinois coals, for example, as against Fulton-Peoria coals in Iowa?

[fol. 2509] A. There was.

Q. Did you have an occasion to make a similar investigation of the distribution of Fulton-Peoria coals in connection with testimony given by you before the Bituminous Coal Division of the United States Department of the Interior?

A. I did.

Q. And are you generally familiar with the distribution of bituminous coals from the Fulton-Peoria origin group and the other origin groups in Illinois?

A. I am.

Q. I ask you whether or not in those studies you learned where there was a breaking point, differentially speaking, which acted as a line of demarcation showing where Fulton-Peoria coals could or could not move as against, say, Southern Illinois coals?

A. I did.

Q. What was that line of demarcation?

A. Where the differential in freight rate as between Fulton-Peoria on the one hand, Southern Illinois on the other hand, was less than 70 cents, we were out of the market.

Q. Did you also go on to project that study to find out what happened to the distribution of Fulton-Peoria coals even in their own home markets, and by that I mean markets adjacent to the mines, where the differential Fulton-Peoria under Southern Illinois ranged between 70 cents and a dollar?

[fol. 2510] A. Yes, sir.

Q. Did you make a similar study with respect to the distribution of those coals where the differential Fulton-Peoria under Southern Illinois ranged from 60 cents to 70 cents?

A. I did.

Q. Will you please tell us what the result of that investigation was, (1) when you were in the 60 cent to 70 cent differential territory; secondly, when you were in that 70 cent to a dollar territory?

. . . . . .

[fol. 2511] The Witness: It showed that we were unable to ship coal to the territory where we had a 60 cent differential or, that is, from 60 to 70 cents. Where we had a differential from 70 cents to a dollar, we were able to market the bulk of our coal.

By Mr. Vesey:

Q. Now, did you hear yesterday certain witnesses testifying, I believe from Freeport and Rockford, with respect to their purchases of coals from the Middlewestern fields?

A. Yes, sir.

Q. Did you hear those witnesses testify as to their use of [fol. 2512] Fulton-Peoria coals?

A. Yes, sir.

Q. Would you say, Mr. Christiansen, that their testimony with respect to the coals that they use, particularly with reference to their use of Fulton-Peoria coals, was typical of the coal purchases by consumers in the territory that is referred to in this case as the affected territory?

A. Yes, sir.

Mr. Stadell: Oh, I object to that, Mr. Examiner, and I move to strike the answer of the witness.

Exam. Trezise. As to what somebody testified to in another case——

Mr. Vesey: This is in this case, right here, yesterday. These witnesses testified——

Exam. Trezise: Oh, you mean in this case?

Mr. Vesey: Exactly.

Exam. Trezise: I misunderstood you.

By Mr. Vesey:

Q. Now, you said their testimony was typical of the consumers in the affected territory. Mr. Christiansen, I ask you, did you answer that question on the basis of your experience gleaned in the exclusive sale of the Fulton-Peoria coals during the period of time that you were the managing director of Middle States Fuels, Incorporated?

A. Yes, sir.

Q. And that is an organization that had the exclusive [fol. 2513] sale of these coals during the period 1940-August 23, 1943, is that correct?

A. Yes, sir.

Q. And you were manager and directly in charge of those sales?

A. Yes, sir.

Q. Now, Rockford, I believe, is in the 60 cent differential territory?

A. Yes, sir.

Q. Beloit, Wisconsin, I believe is also in the 60 cent differential territory?

A. Yes, sir.

Q. Those markets today are or are not substantial markets for Fulton-Peoria coals?

A. They are not.

Q. They are not?

A. That is right.

Q. Do you know of any reason, Mr. Christiansen, why Fulton-Peoria operators should not be given an opportunity to market their coals on a competitive basis in those two towns?

A. I know of none.

Q. In your opinion, would the change in the differential, Fulton-Peoria under Southern Illinois, in compliance with the differential established on July 19, 1925, aid in the re-establishment of competitive conditions Fulton-Peoria as against the other origin groups in Illinois in those two movements?

[fol. 2514] A. It would.

Q. Is there a substantial movement of Fulton-Peoria coals via river movement today?

A. There is.

Q. Is there a substantial movement via truck movement today?

A. Not from the rail shipping mines. There is a substantial movement from some 228 truck mines in the Fulton-Peoria district.

Q. In your opinion, have the prevailing freight rate differentials in the affected territory, Fulton-Peoria as against Southern Illinois, affected in any way the movement of those coals into that territory?

A. Yes, sir.

Mr. Stadell: I object to that question, Mr. Examiner. It calls for a conclusion of the witness. It assumes a lot of facts that haven't been proven.

Exam. Trezise: May we have that question read, please, Miss Reporter.

(Question read.)

Exam. Trezise: Oh yes, yes. You can answer that.

Mr. Vesey: Sure.

Exam. Trezise: You can ask him how he knows that, if you want to.

By Mr. Vesey:

Q. And is the basis for that answer again the basis which you gave a few moments ago, that is the experience gleaned [fol. 2515] by you in the marketing of the Fulton-Peoria coals in this territory?

A. Yes, sir.

Q. Did you or did you not during that period of time make a concerted effort, through your selling agents, to market Fulton-Peoria coals in the affected territory?

A. We did.

Q. Is that a territory that is regularly solicited by you?

A. It is.

Q. And by the Fulton-Peoria operators as a whole?

A. Yes, sir.

Q. It is an active competitive territory, regardless of the amount of coal shipped into that territory?

A. Yes, sir.

Mr. Vesey: That is all.

Exam. Trezise: Do we have further questions?

Mr. Cardy: I have one or two questions on this Dixon situation when Mr. Vesey gets back.

Exam. Trezise: All right, Mr. Cardy.

By Mr. Cardy:

Q. Mr. Christiansen, is there any coal that moves from the Fulton-Peoria district to Dixon, Illinois?

A. There is.

Q. From what point of origin?

A. There is some moves from Victoria and there is some moves from Fulton County mines itself.

[fol. 2516] Q. Did your exhibits show the distance Victoria to Dixon?

A. Victoria?

Q. Yes.

A. 110 miles, I think.

Q. 110?

A. Yes, sir.

Q. Over what railroads, if you know?

A. Galesburg and Great Eastern; C. B. & Q.; C&NW.

Q. You have referred to the rate from the Fulton-Peoria district to Linwood?

A. Yes, sir.

Q. Do you know how that traffic is handled from Fulton-Peoria to Linwood?

A. Yes, sir.

Q. Over what routes?

A. It is handled from C. B. & Q., it is handled C. B. & Q.-East Moline-Chicago, Milwaukee, St. Paul & Pacific; or C. B. & Q-Silvis-C.R.I.&P. The C. B. & Q. Railroad could haul the coal direct to Davenport and handle it on a switching charge to the Linwood plant, because the Linwood plant is in the Davenport district. The switching charge is 30 cents per ton.

Q. Is there a switching charge at Linwood? I didn't quite understand your answer.

A. Only when they haul it to Davenport and turn it over [fol. 2517] to the switching lines to deliver from Davenport.

Q. Is there any switching charge for delivery at Dixon?

A. No, sir.

Q. Do you know how large these plants are located at La Salle, which is south of the Dixon plant; whether they are small or large?

A. They are, for example—you mean the cement plants?

Q. Yes, cement plants.

A. They are large. They use a large amount of coal.

Q. How do they compare with the size of the plant at Dixon?

A. Well, the Marquette Cement Company at La Salle uses approximately 200,000 tons of coal and the plant at Dixon uses about 90,000, I would say.

Q. Now, do you know anything about the delivery of coal at Dixon, hauled in by the Illinois Central, as compared with delivery of coal at La Salle? Is there any connecting line switching at either point?

A. There are three plants at La Salle. One of the plants buys their coal for river movement entirely. The other two receive their coal by rail. I don't know what the switching arrangements are at the Lehigh Cement Company's plant or the Alpha Cement Company's plant.

Q. What about the plant at Oglesby?

A. Well, that is either Lehigh or Alpha. I think that is Lehigh.

[fol. 2518] Q. And what road is that on?

A. I don't know.

Mr. Cardy: I think that is all at this time?

Exam. Trezise: Any further questions?

Mr. Biaett: I have a few questions.

Exam. Trezise: Mr. Biaett.

Recross examination.

By Mr. Biaett:

Q. Mr. Christiansen, whether or not there will be an absorption of a switching charge at Dixon depends upon the delivering carrier, does it not?

A. Yes, shipments moving in over the Illinois Central would have, I believe it is a $2.97 switch charge to absorb.

Q. To get over to industries on the North Western?

A. That is right.

Q. But if the industries are located on the Illinois Central, there would be no absorption, would there?

A. That is right.

Q. Now, what groups take a lower rate to the affected territory other than Fulton-Peoria?

A. There are none. Well, Northern Illinois.

Q. And I presume from your testimony that Northern Illinois ships the bulk of the coal consumed in this territory?

A. No, sir.

Q. What groups do ship the bulk of the coal consumed in this territory?

[fol. 2519] A. Southern Illinois and Indiana.

Q. What groups in Indiana?

A. I don't have the actual figures available, but the Linton-Sullivan and the Princeton-Ayrshire groups I believe are the big shippers in the Indiana group to Rockford, at least.

Q. And generally how much lower is the rate from Fulton-Peoria to these destinations than the rates from Linton-Sullivan and Princeton?

A. They are 40 cents lower than Linton-Sullivan.

Q. You would be 47 cents lower than Princeton?

A. That is right.

Q. And your rate is also lower than Southern Illinois, is it not?

A. That is right.

Q. Now, can you tell me in what manner the freight rate adjustment impedes the movement of your coal when you have rates ranging from 40 to 60 cents lower than your competing groups?

A. One of the factors is the quality. We have the poorest quality of coal in the state of Illinois or Indiana.

Q. And that is the sole reason, is it not?

A. No, that is not the sole reason. That is one of the reasons.

Q. Is it the most important reason?

A. It is one of the very important reasons, yes.

Q. And I presume, since you cannot compete on your present adjustment, even though you have a substantially [fol. 2520] lower rate than Linton and Princeton in Southern Illinois, that you are asking the Commission to take into consideration the quality of your coal?

A. No, I am not asking the Commission to take that into consideration, only to this extent: We don't want the

carriers or the Commission to reduce these rates from these far-away groups with their better quality of coal to such an extent that Fulton County can't sell in its home market.

Just as an illustration, at Dixon, Illinois, you have a 50 cent differential; in other words, Southern Illinois rate has been reduced down until it is only 50 cents above Fulton County. At Cedar Rapids, Iowa, it is 70 cents. Southern Illinois has been reduced 20 cents. We don't want these rates reduced to that extent, that it bars us from selling in our home market, and that is just what it does.

Q. Well, that is a condition separate and apart from the transportation conditions surrounding the movement of coal, is it not, Mr. Christiansen?

A. No, sir.

Q. Then in what manner does it affect the transportation conditions?

A. I will cite you an example. If tomorrow the carriers that serve the Inner and Outer Crescent would publish a $2.10 rate to Chicago, Southern Illinois wouldn't sell one nickel's worth of coal in Chicago with the $2.05 rate, and [fol. 2521] yet they would be 5 cents less. Now, Chicago——

Q. And yet the difference would not be in the freight rate relationship, would it?

A. It certainly would be there.

Mr. Vesey: You mean the difference in the amount of sales?

The Witness: And that is what has happened here.

By Mr. Biaett:

Q. The fact that Southern Illinois, under your hypothetical situation, wouldn't sell its coal in Chicago wouldn't be caused by the freight rate from Southern Illinois?

A. It would be caused by the carriers that would prefer the eastern district by hauling coal twice or three times as far for approximately the same rate, and that is what has happened here.

By Mr. Vesey:

Q. In other words, what you are complaining of, as I understand it, is the preference that is accorded other origin groups against Fulton-Peoria in what is commonly referred to as Fulton-Peoria's home market?

A. That is right.

Mr. Kaylor: Have you got in this record what your market is today, where you market your coal today?

Mr. Vesey: Where we market today?

Mr. Kaylor: Yes. You don't seem to have a market in Illinois. I am wondering if he had a market at all.

Mr. Vesey: It is shown generally in here. If you would [fol. 2522] like to have it specifically, we will give you the answer.

Mr. Cardy: We will give you that in the morning. We will have a witness here.

The Witness: It is not in the affected territory. We are not marketing——

By Mr. Kaylor:

Q. If you don't have it at home, I wanted to know where it was.

A. The Tri-Cities, Peoria.

Exam. Trezise: Further questions?

Mr. Biaett: That is all I have.

Mr. Scott: May I ask one question?

Exam. Trezise: Mr. Scott.

By Mr. Scott:

Q. Mr. Christiansen, you stated that the tonnage from Indiana moved for the most part from the Linton-Sullivan district to Rockford.

A. I said Linton-Sullivan and Princeton.

Q. Can you tell me on what railroad the Linton-Sullivan tonnage moves; the preponderance of it, rather?

A. I think the Milwaukee, most of it.

Mr. Scott: Thank you. That is all.

Mr. Stadell: I have another question.

Exam. Trezise: Mr. Stadell.

By Mr. Stadell:

Q. Isn't it true that considering any mine or any group of mines that the tendency is to sell their coal in the markets or at the points where they can get the greatest price?

[fol. 2523] A. Certainly. Every mine does that.

Q. So that if, in relation to their competitors, they have a rate of $1.00 per ton less at a certain point, they will sell

their coal there instead of selling it somewhere else, where the difference is 40 or 50 cents a ton?

A. That is correct.

Q. Because it increases their realization of profit?

A. That is right; up to the point where they have a surplus of coal or where they are not being able to market their normal productions.

Q. Have the mines in the Fulton-Peoria district or at Atkinson got any surplus coal at the present time?

A. No, there isn't any mine in the United States that has got surplus coal at the present time; haven't had for a year.

Q. How long has it been since the mines in the Fulton-Peoria district have had a surplus of coal?

A. All through the year of 1942.

Q. In other words, during the entire year of 1942 they have sold all of the coal that they could physically produce?

A. No, I said all through the year of 1942 we have had a surplus until about, say, October, 1942.

Q. And from then on you haven't had any surplus?

A. No, sir, or no one else.

Q. Now, could you take any plant in Rockford, Illinois, or [fol. 2524] Freeport——

A. What do you mean, take it?

Q. I mean take the plant, any plant in any of these Northern Illinois points and demonstrate by means of steam tests or cost per thousand pounds of steam for Fulton-Peoria coal on the one hand and Springfield or Southern Illinois coal on the other——

A. I think Mr. Hampshire——

Q. Why you can't compete on your present freight rate adjustment?

A. I think Mr. Hampshire illustrated that very fine yesterday. He said for the Indiana——

Q. I am asking you if you can do it. I am not interested in what he did.

A. I haven't made any steam test that I have available here today. I know we were not able to take business in Rockford during the year 1942 because I know how we tried to sell it.

Q. Isn't it true that the bulk of the screenings coal business or fine coal business in Rockford is being shipped from mines in Indiana rather than mines in Illinois?

A. Yes. It was in 1942 and I think it is in 1943.

Q. And while in 1943 one of the mines in the Fulton-Peoria district got some of the tonnage of the utility plant at Rockford, that was because the Indiana mines had so much business elsewhere that they couldn't supply that quantity of tonnage?

[fol. 2525] A. That was a war condition, yes, sir.

Mr. Stadell: That is all.

Exam. Trezise: If there are no further questions——

Mr. Biaett: Just a minute; I have one further question, please, Mr. Examiner.

Exam. Trezise: Mr. Biaett:

By Mr. Biaett:

Q. Just how much poorer is the quality of your coal than that produced in Southern Illinois, Linton or Princeton?

A. I couldn't tell you in cents.

Mr. Vesey: In what respect?

Mr. Biaett: That is all.

Mr. Vesey: Can you pin your question down to some common denominator so he could answer you? I am sure the witness will be glad to answer you either on the basis of British Thermal units as a basis of comparison, moisture as a basis of comparison, degradation or any basis you want to take.

Mr. Biaett: He has already answered the question as far as I am concerned.

The Witness: I can refer you as to what the Coal Commission fixed as to the difference in the two qualities of coals.

Mr. Biaett: I object to that, Mr. Examiner. The Coal Commission is a defunct agency and what they did is no longer of any importance.

Exam. Trezise: He is trying to help, Mr. Biaett.

[fol. 2526] Mr. Biaett: I don't need any help, Mr. Examiner. I am satisfied.

Exam. Trezise: Any further questions?

Mr. Vesey: Just one other question.

Redirect examination.

By Mr. Vesey:

Q. As I understand your testimony in answer to Mr. Stadell as to the markets of the Fulton-Peoria coals, the markets of those coals were, as you stated, in western, northwestern Illinois, eastern Iowa——

A. Peoria.

Q. In other words, I would take it from that answer, as shown by the evidence in this record, that those markets are in those territories where you have a differential relationship Fulton-Peoria under Southern Illinois of from 70 cents to a dollar or greater?

A. That is correct; or greater.

Q. So that by a mere examination of your differential or difference in rate territory the markets for your Fulton-Peoria coals can be immediately ascertained?

A. Yes, the present markets; but that is not what we consider our home market. Our home market would be all of the northern part of the state of Illinois, which we are not able to get into today.

Mr. Vesey: That is all.

Recross examination.

[fols. 2527-2533] By Mr. Stadell:

Q. Weren't there bids recently submitted for the coal requirements of the Sanitary District of Chicago involving approximately 75,000 tons on which the various mines in Illinois bid?

A. Yes, sir. Not recently. There was—well, there was recently, but we didn't get it.

Q. About a year ago, something like that?

A. There was—each year the Sanitary District advertises for coal.

Q. And on what basis were the bids asked?

A. I think they asked for various prices; that is BTU's for a cent, with a lot of adjustment for ash and moisture and what have you.

Q. And the Fulton-County mines secured that basis, did they not, in competition with the mines in Belleville, Southern Illinois and the rest of Illinois?

A. They secured some of the business in 1942, yes, sir.

Q. That was how much tonnage, approximately 75,000 tons?

A. Yes, the original contract was for 75,000 tons.

Q. And the Sanitary District that I referred to is the Sanitary District of Chicago, located in Chicago?

A. Yes, sir.

Mr. Stadell: That is all.

By Mr. Vesey:

Q. Is that a rail or water movement?

A. That was a rail movement.

[fol. 2534] R. H. May, was sworn and testified as follows:

Direct examination.

By Mr. Cardy:

Q. Will you state your name.

A. R. H. May.

Q. Where do you reside and what is your connection with the Northern Illinois Coal Corporation—give us your business address rather than your residence.

A. My address is 310 South Michigan Avenue, Chicago, Illinois.

Q. What is your connection with the Northern Illinois Coal Corporation?

A. Manager of the Northern Illinois Coal Corporation, the Tecumseh Coal Corporation, and the Sunlight Coal Company.

Q. What is the nature and business of the Northern Illinois Coal Corporation?

A. Producing coal.

Q. At what point?

A. Wilmington, Illinois.

Q. In what group is that?

A. It is the Northern Illinois group, and the Wilmington mine is the only large mine in that group.

[fol. 2535] Exam. Trezise: You will have to talk a little louder.

By Mr. Cardy:

Q. How long has that mine been in operation, Mr. May?

A. The Wilmington mine.

Q. Yes.

A. It has been in operation since 1928.

Q. Did you state how long you were with that company?

A. No. I was with that company since October, 1924.

Q. Now, briefly, will you state your railroad experience in the mining and sale and distribution of coal in the state of Illinois and Indiana and other adjacent territory.

A. I was with the Burlington railroad in their coal traffic department for some fifteen years as chief clerk, and later in charge of coal traffic. During the World War No. 1 I was deputy district representative in the Fuel Administration. In 1920 I went to St. Louis as vice-president of the Southern Coal, Coke & Mining Company, which operated mines in the Belleville district. In 1924 I came to Chicago in my present capacity.

Q. Would you say that you are familiar with the freight rate structure, in so far as coal is concerned and the distribution of coal and the sale of coal in this territory, and have been for a great many years?

A. My work has all been along those lines.

Q. Now, can you briefly give us a description of the so [fol. 2536] called Northern Illinois field? What is the extent of the operations? You say that your mine is the largest mine. Give us a description of your mine and then tell us what other mines are in the district and how they dispose of their coal, just briefly, so we will have a picture of the Northern Illinois field.

A. The No. 10 mine of the Northern Illinois Coal Corporation at Wilmington produces from 1,200,000 to 1,300,000 tons a year. It is served by the Alton Railroad and the

Santa Fe Railroad, and the distribution of the coal is mostly to nearby points. I would say 150 miles or maybe a little over would cover the area of distribution.

The other mines in the district are mostly small mines or practically all small mines. The principal ones are the Osage Coal Company and the Wilmington Mines, Incorporated which is Braidwood. Their coal moves principally by truck and their rail shipments consist mostly of fine coal, and when they have a surplus they try to dispose of it by rail, and I don't think either one ships much over 100,000 tons a year by rail.

Q. In other words, is that about the extent of their rail shipments, 100,000 tons?

A. I would say that was the maximum, the bulk of it moves by truck.

Q. Are there any other mines located in Northern Illinois that produce coal, whether they ship it by truck or rail?

A. Yes, there are some truck mines, Morris Coal Mining [fol. 2537] Company, and maybe some others. I am not particularly familiar with them.

Q. About how many of those smaller mines would you say are located in Illinois?

A. I don't know, Mr. Cardy.

Q. At one time there were, were there not, a large number of so-called shaft mines in the Northern Illinois district?

A. At one time the Northern Illinois district was the largest coal producing district in Illinois.

Q. Now, just generally speaking, can you tell us where you distribute your coal from the Northern Illinois mines, where is your market for Northern Illinois coal I am particularly talking about now?

A. The heaviest movements are to the two railroads that serve the mine and to the Chicago area. There is some movement to the points involved in this case. We ship as far north as Madison, Wisconsin.

Q. What have you to say with respect to whether or not there is a very substantial truck movement from the mines

in Northern Illinois to a radius within probably 50 or 75 or 100 miles?

A. There is a very substantial movement.

Q. Now, Mr. May, in this proceeding the carriers propose to increase the rates from your mine at Wilmington from five to twenty cents a ton to points in Northern Illinois, exclusive of Chicago, and some other points, but gen- [fol. 2538] erally speaking, to practically all destinations in Northern Illinois, where any coal moves by rail. What would you say would be the effect upon the movement of your coal from your mine by rail if the rates are increased from 5 to 20 cents a ton?

A. It would undoubtedly decrease the rail movement. It has always been my policy to keep as much of our production on the rail as we possibly can. But if an increase in these rates is brought about, it would force us probably to ship more coal by truck.

Q. Is most of the coal that is taken away by truck handled by so-called contract carriers or is the Northern Illinois Coal Corporation in the trucking business itself?

A. No, we are not in the trucking business and we do not deliver a single pound by truck or any other method of transportation. The trucks come to the mine to load, and our sole interest in the matter is selling the coal at the mine.

Q. Now, Mr. Christiansen testified that from the Fulton-Peoria District to the points in Northern Illinois where increases are proposed, it is more or less of a hodgepodge adjustment in rates. In other words, there is no rhyme or reason in the method of constructing rates from that district. Is that also similar and true so far as the construction of rates from Northern Illinois to this territory is concerned?

A. No, that is not true as far as the rates from Wilmington to this territory in Northern Illinois and Southern Wis- [fol. 2539] consin *is* concerned.

Q. Tell us what the situation is.

A. Most of the rates—there are exceptions—that we have from Wilmington to this territory were established as a result of the decisions of the state and Interstate Com-

missions and they were based principally on the service performed by the carriers. They are not related to any other group by differential and are supposedly, to the best of my knowledge and belief, just and reasonable rates for the service performed.

Q. Now, outside of possibly the rate to Chicago and some of these other points, will you turn to the carriers' exhibit, which I think you have before you, showing the adjustment from Northern Illinois to Belvidere and the proposed increases. What have you to say with reference to that? I believe it is in Section 5.

A. I have Mr. Robertson's Exhibit No. 4.

Q. I think it is section 5, page 3, as I have it here.

A. That would be Belvidere?

Q. Yes. Now, will you notice that the Wilmington mine's distance of 94 miles is shown, and the rate is $1.05, and the carrier's propose to increase that rate to $1.25—20 cents a ton. What have you to say about that proposal, Mr. May? Have you got that before you?

A. The movement from Wilmington to Belvidere on the $1.05 rate has been negligible and I would say that an in- [fol. 2540] crease of 15 cents per ton is entirely unjustified.

Q. 20 cents a ton.

A. Or 20 cents a ton, was entirely unjustified by any method of rate making.

Q. In other words, today you might say the rate is a paper rate, and they are putting 20 cents a ton on it, is that correct?

A. That is correct.

Q. Do you know whether or not there is a truck movement to Belvidere from any of these truck mines?

A. Yes, there is.

Q. Now, turn to DeKalb, what have you to say about the adjustment to DeKalb?

A. In that case for a distance of 74.6 miles they propose a 5 cent increase, from $1.35 to $1.40, and again I see no justification for it. The $1.35 rate moves very little tonnage, and certainly——

Q. What do your records indicate as to whether or not Northern Illinois, which is the largest mine in the state, moved any coal to DeKalb?

A. To DeKalb in 1942, 1,082 tons; in 1943, 195 tons.

Q. I take it that you have examined some of these others and there are similar situations without encumbering the record. They are all shown. But just briefly now, can you see any justification, so far as the carriers or the consumers [fol. 2541] or shippers are concerned, which would justify increases, since they have suggested these short haul rates in Northern Illinois territory?

A. None whatever.

Mr. Biaett: Mr. Examiner, I have no objection to Mr. May stating his position from the standpoint of shippers, but I do object to him stating his position from the standpoint of carriers or the consumers. It hasn't been shown that he is qualified to speak for either the carriers or the consumers.

Mr. Cardy: He was with the Burlington for a great many years.

Mr. Biaett: Well, he is not speaking for the Burlington.

Mr. Cardy: Well, that is true.

Exam. Trezise: Mr. May, of course, appears for the coal companies that he named.

Mr. Cardy: Yes.

Exam. Trezise: He doesn't appear for anyone else?

Mr. Cardy: No, that is true. Of course, I was asking the effect.

By Mr. Cardy:

Q. I will ask the question in this way: is it your opinion at this time that the present rates from Northern Illinois to points in Illinois have any effect upon the movements of coal moving in interstate traffic to this destination territory?

A. No.

[fol. 2542] Q. That is particularly to the points where increases are proposed?

A. They have no particular effect upon the movement of interstate traffic. The tonnages speak for themselves.

Q. Now, Mr. May, you have stated also that you operate two other mines. Where are they located and in what district, and give us the names of them.

A. The two mines are the Tecumseh Coal Corporation located at Tecumseh, Indiana, on the New York Central Railroad; and the Sunlight Coal Company located near Boonville, Indiana, on the Southern Railway. The Tecumseh mine is in the Princeton-Ayrshire group and the Sunlight mine is the so-called Boonville group, which is really part of the Princeton-Ayrshire group. That one mine is practically the whole group.

Q. When was the Tecumseh mine opened up?

A. 1940.

Q. What is the extent of that operation?

A. It produces something over a million tons a year, say 1,300,000.

Q. And prior to the shipping of coal from that mine, what rates did the carriers establish or put into effect that took care of the first movements from that mine?

A. The first load moved from that mine on the Princeton-Ayrshire rates. Prior to the opening of the mine, the Boonville rates were published, but when that was called [fol. 2543] to the carriers' attention, they immediately corrected it and put in the Princeton-Ayrshire basis.

Q. In other words, after the mine commenced to ship coal, it has continuously been in the Princeton-Ayrshire group?

A. That is correct.

Q. And there was no shifting from one group to another as has been intimated in this proceeding, so far as the Tecumseh Coal Corporation is concerned?

A. No, the coal is all moved on the Princeton-Ayrshire rate.

Q. Now, first tell me how far the Tecumseh mine is from the Boonville mine?

A. Cross country the Tecumseh tipple is ten miles from the Sunlight tipple, and the Tecumseh mine produces coal from land leased from the Sunlight Coal Company. In other words, both mines are on the same property.

Q. They are adjacent mines, are they not?

A. Yes.

Q. Is there any difference in the freight rate to the affected territory, Tecumseh versus Boonville?

A. The Boonville rate is 3 cents per ton higher than the Tecumseh rate.

Q. Although some of the land that the Tecumseh mine is mining from is owned by the Boonville company and in the so-called Boonville district?

A. That is correct.

[fol. 2544] Q. Now, Mr. May, it is proposed in this proceeding to increase the rates from Boonville to the extent of 15 cents a ton, both from Boonville and Tecumseh—strike that out, first.

First I will ask you to state what the markets are for Indiana coal. Tell us as much as you can in detail where Indiana goes with its coal, into what markets it is limited, if any.

A. The principal markets for Indiana coal are within the state of Indiana. There are considerable tonnages that move to Chicago and to Northern Illinois and west, even some small tonnages into Iowa. But aside from that, the Indiana market is quite restricted. The eastern half of Indiana is not available to them because that is an eastern coal market, built largely by Ohio and other eastern coals and the burning equipment in that territory seems better suited to the eastern coals, and Indiana has never found much of a market east of the city of Indianapolis. You could almost draw a line from north to south and find very little tonnage moving into the eastern part. On the west they ship a little coal into nearby Illinois towns, such as Mt. Carmel and points along the line, but they don't go deeply in there because of the competition from Illinois mines.

Q. Do they get into the east St. Louis or St. Louis market on the west?

A. They don't get in there. They don't move south of [fol. 2545] the Ohio River, where West Kentucky coal is produced. So that all in all their markets are pretty well restricted to Indiana and part of Illinois, the northern part of Illinois, Southern Wisconsin, Iowa. They have had some slight movement to Michigan, but very slight. That is not a market for Indiana coal.

Q. Now, what effect would you say that an increase in the rates from your Tecumseh and Boonville mine would have on the movement of coal to this territory, Northern Illinois territory?

A. Such an increase would decrease the movement of coal.

Q. Now, Mr. May, it has been intimated in this proceeding that distance should be one of the primary factors in constructing rates from Indiana and Illinois to this territory, and having in mind particularly the location of the Boonville district, what would you say with reference to that situation, and I call your attention to the carriers' exhibit 4, section 3, page 3, showing the adjustment to Belvidere. I would like to have your comments on that situation, particularly where it is proposed to construct rates using the short tariff routes from each group, giving considerable weight to the difference in distance.

A. Page 3 of Exhibit 4, to which you refer, shows distances and rates to Belvidere, Illinois. It shows the distance from Boonville to be 400.4 miles.

Mr. Stadell: What point is that?

The Witness: That is from Boonville to Belvidere, there [fol. 2546] being practically only one mine in the group, and that is the only distance shown. For Southern Illinois the distance, short tariff route, is 364.8 miles; long tariff route, 521.2 miles. Now, if they are to consider the single mine at Boonville as the basis for making these rates, and bear in mind that that is the most southerly mine in any of the Indiana groups, it would seem that the same basis should be applied to the most southerly mine in the Southern Illinois group, for example, which, of course, would make the rate from some Southern Illinois mines higher than from Boonville.

By Mr. Cardy:

Q. Turn over to page 5 and comment on the situation showing the rates to DeKalb.

A. I would like to point out on that Belvidere exhibit, before I leave it, that the spread between the short tariff route and the longest tariff route for Southern Illinois is 156.4 miles, while for the Princeton group the spread between the shortest and longest tariff routes is only 127.3,

and that the addition of Boonville to the Princeton-Ayrshire group would not make as great a spread as they have in Southern Illinois.

Q. Now, briefly comment on the situation at DeKalb, will you, Mr. May.

A. The distance from Boonville to DeKalb is shown as 380.5 miles. From Southern Illinois, shortest tariff route, 313.8 miles, and longest tariff route 393.2 miles. In that case also the longest tariff route exceeds the distance from [fol. 2547] the single mine at Boonville.

Q. Now, look at the last column, at the average from the group. Notwithstanding the fact the longest distance is greater than that and the Boonville mileage is lesser than the longest tariff route, the average from the group is less than Boonville?

A. That is correct, 327.4.

Q. What is the reason for that, Mr. May?

A. Because they have taken the shortest hauls and the longest hauls and averaged them together. That is merely an average and shows the extent of the spread of the group.

Q. Isn't it because of the fact in figuring the average mileage from the group they have included a great many mines and figured an average giving the benefit to the long haul mines, where Boonville only having one mine——

Mr. Stadell: Just a minute. I object to the assumption in the question that Boonville only has one mine. It hasn't been shown here.

By Mr. Cardy:

Q. All right, I will ask you, Mr. May, to tell me the reason for it. Tell me the reason why from Boonville the longest tariff route is 380 miles and the longest tariff route from Southern Illinois is 393 miles, and when you get over to the mileage in the average group which they used for rate making purposes, Southern Illinois is shown as 347 and Boonville is shown as 385. Tell me why there should [fol. 2548] be that difference?

A. Because the Boonville mileage is from a single point, while the average mileage is from a group where some hauls are longer than others. So that the average pulls down the distance from the long haul mines in that group.

Mr. Biaett: Is Mr. May testifying from his own knowledge or is he purportedly interpreting the exhibit?

The Witness: I am reading just what is in the exhibit.

Mr. Cardy: This is the carriers' exhibit, Mr. May?

The Witness: Yes.

Mr. Biaett: And the carriers' exhibit shows there is only one mine in the Boonville group?

The Witness: I will state there is only one mine in the Boonville group of any importance.

Exam. Trezise: And that the distance is figured from that one mine, that is what you have said?

The Witness: Yes, it shows clearly it is figured from Boonville. It doesn't say from Southern Indiana, as it does in the case of Southern Illinois.

Mr. Biaett: It is figured from the tariff origin points, is it not, on that exhibit?

The Witness: I would take it that exhibit says it is taken from Boonville, and knowing there is no other mine of any importance except Boonville, I would say that mileage is the Boonville mileage.

[fol. 2549] Mr. Cardy: Mr. Biaett, it shows the shortest and longest route is 380.5; that is the shortest and longest route. There can be only one mine taken.

Mr. Biaett: I think we all understand the true situation.

Exam. Trezise: Well, are we confusing the record with these statements? The Examiner understood that in taking the points of origin to determine the average rate from the group that time and time again it has been gone over that we should select the tariff origins from which to figure our distances. Now, I assume that that has been done. Now, you say it has not been done here. Now, that is a little confusing to me.

Mr. Biaett: Those are our exhibits and our witnesses stated they took the tariff origin points. If Mr. May wants to put in that they didn't, why, you can put it in for what it is worth.

The Witness: I didn't say they didn't put it in.

Mr. Biaett: Well, you are misinterpreting the exhibits that were put in by the people who prepared them.

The Witness: Will you point out to me where I misinterpreted it?

Mr. Biaett: Certainly. The mileage from the Boonville group is the average mileage from the tariff origin points shown in the Southern Railway tariffs in the Boonville group. The shortest tariff route is the shortest tariff route via a connecting line with the Southern. The longest tariff [fol. 2550] route is the longest tariff route via the longest connecting line, from the average of the origin points in the group.

The Witness: And the exhibit shows that the longest tariff route, the shortest tariff route, and the average from group mileages are identical.

Mr. Biaett: Well, that is because they only have one tariff route from the Southern to that particular destination.

Mr. Cardy: Mr. May, I think the record is clear on mileages, and let us get on to something else. We could talk here for two or three days, and I think the Commission understands very well.

Exam. Trezise: Well, the Interstate Commerce Commission Examiner understands clearly, definitely, specifically and without equivocation that these distances are figured from the tariff origins, unless it has been shown specifically that there is no mine at these particular points. Now, if you throw a lot of things in here to confuse the issues, no one can tell in such a record as this just what the fact is, and I am stating my understanding. Now, if I am wrong, it ought to be shown here very specifically that my understanding is wrong.

Mr. Cardy: Well, if I follow that question a little bit further, I would come to the same results. But nevertheless, the exhibits show what I want to show, and I can show it on brief; so I will not argue with the witness on that here.

By Mr. Cardy:

Q. Now, Mr. May, as I understand it, you have had a [fol. 2551] great deal of experience in the method of constructing coal rates and the natural, normal basis and proper basis for constructing coal rates from the various mines in Illinois to the points in Northern Illinois, Wisconsin, and other points, is that true?

A. I have had a good deal of experience of that kind.

Q. And you are familiar with all the various coal mining groups in Illinois and Indiana, are you not?

A. Yes, sir.

Q. What would you say, where you have a situation where one railroad possibly two, have lower rates from the same group to a common destination than obtain from other points of origin in the same group via other carriers?

A. The movement is over those lines having the lower rates.

Q. Well, I am directing your attention particularly to the adjustment of the Milwaukee and the Illinois Central from the Brazil-Clinton and Linton-Sullivan district to this territory as compared with the rates from other mines, from mines located on other roads. Are you familiar with that adjustment down there?

A. I know that the Milwaukee rates are lower than the rates over the other lines.

Q. What do you say about an adjustment of that kind?

A. I would say it was a maladjustment; if they are going to compete, they should be the same.

[fol. 2552] Q. Now, so far as your familiarity with the adjustment in Indiana to this territory, how would you say that that maladjustment ought to be corrected?

A. It is my opinion that the rates published by the Milwaukee are on the proper relative basis compared with the Illinois rates, and that the Indiana rates from other districts should be adjusted to the rates of the Milwaukee from the Brazil-Clinton District.

Mr. Cardy: Cross examine.

Cross examination.

By Mr. Biaett:

Q. Mr. May, do you get a higher price on coal that you sell to trucks than on coal you sell to railroads or coal that you sell for movement by railroads?

A. Yes.

Q. On the average how much higher?

A. Under normal conditions 75 cents to $1.00 a ton higher.

Q. Now, you stated, I believe, that the rates from the Northern Illinois group, from the Wilmington mine, to the suspended territory in Northern Illinois and into Wisconsin

had been prescribed by the Commission, either the Illinois Commission or the Interstate Commission.

A. Largely.

Q. Are you familiar with the cases in which those rates were prescribed?

A. To some extent, yes. I participated and testified in [fol. 2553] some of those cases.

Q. Can you give us reference to those cases?

A. I couldn't without looking them up, because I don't carry the case numbers in my mind as some of your railroad men do.

Q. Do you know from and to what points the rates were prescribed?

A. Oh, yes, the rates from Wilmington to Rockford were prescribed, to Beloit, Janesville, Edgerton, Madison, Janesville.

Q. I believe you stated that Boonville was the most southerly mine in Indiana, is that correct?

A. That is correct, with the exception of a small mine on the E&OV Railroad out of Evansville, which doesn't ship any coal anywhere, and I don't think it is operating now.

Q. You mean there is only one mine in the Evansville district?

A. No, there were other mines—there is a Crescent mine right in Evansville.

Q. That is in the Indiana group, is it not?

A. It is in a different group from any that has been discussed here. They call it the Evansville group and it takes an entirely different freight rate. I might mention in that connection that the distance from our Boonville operation to this territory could be greatly shortened by a route through Evansville, which is denied us because the carriers want to protect the Evansville gateway on eastern freight rates. So that our coal travels a longer distance than necessary to reach the markets for carrier reasons, and [fol. 2554] we maybe have been penalized for that.

Q. Now, Evansville takes a higher rate than Boonville, does it not?

A. It does.

Q. Yet by any route the distance from Boonville is greater than that from Evansville, is it not?

A. Will you say that again?

Q. Via any possible route, either via Huntingburg or Evansville, the distance is greater from Boonville than the distance from Evansville?

A. That is correct, but that is entirely a rate adjusting matter. Distance has nothing to do with that situation.

Q. Now, taking your Northern Illinois group mine at Wilmington, would you have any objection if mines in the Danville group took lower rates than your Wilmington mine to Rockford, to be specific?

A. I don't think the Danville rate should be lower than the Wilmington rate, no.

Q. Well, why not, may I ask you that question?

A. Because I don't think Rockford ever has been or ever will be a natural market for Danville coal, and of course, the distance does enter into that too. It is probably a greater distance from Danville.

Q. I take it, then, if Rockford wouldn't be a natural market for Danville coal, it wouldn't be a natural market [fol. 2555] for Brazil-Clinton coal?

A. Just because it hasn't ever had the quality of coal that seemed to fit that market. So very little consideration has ever been given, so far as I know, to the Danville rates to Rockford.

Q. Do you think the rates from mine in the Springfield group should be lower than the rates from the Wilmington mine to Rockford?

A. No.

Q. For what reason?

A. I think it would be a very improper adjustment to move coal right through one coal field to short haul destinations with a lower rate.

Q. Then the same would be true of Southern Illinois, Belleville and DuQuoin, would it not?

A. Yes.

Q. Because they are a greater distance, you don't think they should have lower rates than the Wilmington mine?

A. Certainly not, because the rates were not constructed that way. It is a very fortunate thing for the Illinois freight adjustments that the better coals lie greater distances. If it were not for that fact, you would see an entirely different economic situation in Illinois. For example, if the Wilmington mine were 100 miles further away from the markets that we are discussing, it never would

have been opened because it would not have been econom-
[fol. 2556] ically sound.

Mr. Biaett: That is all I have. Thank you.
Exam. Trezise: Any further questions?
Mr. Stadell: I have a few questions.
Exam. Trezise: Mr. Stadell.

By Mr. Stadell:

Q. Approximately how far is your Northern Illinois mine at Wilmington from Chicago?

A. 50 miles.

Q. And Chicago has generally been referred to, has it not, as the greatest coal market in the world?

A. Yes.

Q. In reply to a question of Mr. Biaett you stated that normally your mines would receive from 75 cents to $1.25, was it, per ton more?

A. 75 cents to $1.00 more for truck coal.

Q. That is, they would receive 75 cents to $1.00 per ton more for the coal that they would sell at the mines to trucks, that was to be hauled by the trucks to a consumer at Rockford or some other point, for example, than they would receive for the coal that they shipped by rail from the same mine in Northern Illinois to Rockford for a consumer there or a dealer?

A. That is correct.

Q. And in connection with the sale of coal to the trucks, you would receive the money immediately at the time you loaded the coal in the truck?

[fol. 2557] A. That is right.

Q. Whereas in the case of coal shipped by your Northern Illinois mine to Rockford, Freeport, or some other point, you would have to ship the coal and then invoice the customer and have to wait for the money?

A. Our terms are net cash, 20th day of the month following shipment.

Q. But they don't always pay it on the 20th day of the month?

A. They have been under the Coal Act.

Q. But the Coal Act is now no longer in existence, is that right?

A. I am glad to say they are still paying, Mr. Stadell.

Q. Now, you stated that the mine owned and operated by your Sunlight Coal Company was the only mine in the Boonville, Indiana group?

A. The only large mine.

Q. Approximately what is the annual production of the Sunlight mine, we will say, in 1940?

A. In 1940 it was approximately a million tons. It is producing at a larger rate now, higher rate.

Q. I will ask you this, isn't it true there is also a mine in the Boonville, Indiana group known as the Mariah Hill Super Block No. 1 that produces approximately 80,000, 90,000 or 100,000 tons of coal annually?

A. It did produce somewhere around there, but it is [fol. 2558] producing a great deal less now, and the bulk of it is moving by truck.

Q. Isn't it true there is a mine Star Hill No. 1 owned by the Sternberg Coal Corporation, in the Boonville group?

A. There was, but if that mine is producing any tonnage at present, it is very small.

Q. Wouldn't the production be approximately 200,000 tons annually?

A. It would have been, but I don't believe they are producing that now.

Q. You don't know what the production is?

A. I haven't been there recently, but I will say it is practically no factor in the competitive situation.

Q. You don't know what their production is now?

A. I don't know that they are producing anything. There was also a Pigeon Creek mine, and that is closed now and we now own the company.

Q. How about the Super 5, Incorporated, mine?

A. That isn't the Mariah Hill mine?

Q. No, it is a different mine.

A. I don't know anything about that. I suspect it is a truck mine.

Q. You don't know whether they are shipping coal via rail at the present time?

A. I do not know. If it is, it is a negligible amount.

Q. Now, I believe you stated that your Tecumseh mine [fol. 2559] was opened in 1940?

A. That is correct, in March, 1940.

Q. And at the time that mine was opened your company asked the railroads to establish rates on the Princeton group basis?

A. Well, yes, before it started producing we asked them to do that and they did, and they docketed that proposal with the Illinois-Indiana Coal & Coke Committee, and it was disapproved, was it not? I am not familiar with what went on in the Illinois-Indiana Coal & Coke Committee deliberations. I do know this, I do know that they published the Boonville rates, which are 3 cents higher than the Princeton-Ayrshire, but before the mine went into operation they withdrew them and put in the Princeton-Ayrshire rate, and all the coal has been shipped on that rate basis.

Q. When was the first coal shipped from the Tecumseh mine?

A. In March, 1940, to the best of my recollection.

Q. And you don't know when the rates from that mine were established, do you?

A. Not the date. I know they were in effect then when the mine started shipping, the Princeton-Ayrshire rates were in effect.

Q. Now, isn't it true that the Princeton-Ayrshire basis is not in effect from your Tecumseh mine to all destinations, but only to destinations on certain railroads, such as the New York Central, the Wabash, and possibly one or two [fol. 2560] other railroads, and that to points on other railroads the rates are on the Boonville basis?

A. I am not entirely familiar with that, Mr. Stadell. I know there may be possibly lots of places where we don't have rates, but I do know anywhere we have wanted to ship we have found the rate proper.

Q. Now, you said you were familiar and have been familiar for several years with the production of coal in the Indiana groups. Isn't it true that about 1930, the majority of the mines that were on the Boonville basis of rates were shifted to the Princeton basis of rates, leaving only your mines and these other mines that I have named as the Boonville group?

A. That is correct.

Q. And your Sunlight Coal Company mine and your Tecumseh mine are both located in the same county in Indiana, are they not, in Warrick?

A. That is correct. They are both in Warrick County.

Q. And none of the other mines in the Princeton group, except your Tecumseh mine, are in Warrick County?

A. There are no other mines in Warrick County.

Q. From what seam of coal are you producing your coal by your Sunlight and your Tecumseh mines?

A. It is the No. 5 Indiana seam.

Q. And that is generally the seam that is being operated in by the other mines in the Princeton district?

[fol. 2561] A. That is correct. There is some No. 7 and some No. 6 coal in there. We are producing some coal through our Sunlight tipple which goes right in with the No. 5, that is not No. 5. We don't know just what it is. But there are other seams in there, but the bulk of the production in there is No. 5 seam.

Q. Well, the largest mines from the standpoint of production in Indiana are located in the Princeton group, is that correct?

A. That is correct; the King station mine, the Enos Coal Company, the Ayrshire-Patoka's two mines, the Knox mine, they are all there. There is the Maumee Collieries Company.

Mr. Scott: Just to keep the record straight, are the Knox mines in the Princeton-Ayrshire or Linton-Sullivan district?

The Witness: In the Linton-Sullivan.

Mr. Scott: And the Maumee mines also are in the Linton-Sullivan district?

The Witness: That is correct.

By Mr. Stadell:

Q. Well, the mine of the Enos Coal Company is in the Princeton district?

A. Yes, sir.

Q. And it produces just a little less than two million tons annually—about one million eight hundred thousand tons?

A. No, it doesn't produce that much.

Q. Well, wasn't its production in 1942 just about one million eight hundred thousand tons?

[fol. 2562] A. It was shown in the record as that, but there are some other mines that produce on the A. W. & W. and move their coal through the Enos tipple. So I couldn't say that Enos actually produces that much.

Q. You didn't see the advertisement of the Enos Coal Company in the Chicago Journal of Commerce that they produced 1,800,000 tons of coal in 1942?

A. Yes, sir, I did.

Mr. Cardy: I object to that, asking about an advertisement, as to whether or not a certain coal company advertised.

Mr. Stadell: He said he saw the advertisement.

Mr. Cardy: Well, I move to strike out the answer that they produced 1,800,000 tons. An advertisement in the paper about tonnage might not be reliable.

The Witness: Well, it was in there, that that much tonnage moved through their tipples, but I don't recall just where the advertisement stated that Enos produced it.

By Mr. Stadell:

Q. Do you know of any reason, Mr. May, why your Sunlight mine should have a higher basis of rates to Northern Illinois or any of the northwest than mines in the Princeton group?

A. On the contrary, I think it should have the same rates.

Q. You think they should be on the same basis?

A. Yes, sir.

Mr. Stadell: That is all I have.

[fol. 2563] By Mr. Christiansen:

Q. I have one question: Mr. May, is it not a fact that each increase in rail transportation costs for short haul territory results in a wider distribution of coal by truck?

A. Yes.

Mr. Christiansen: That is all.

Redirect examination.

By Mr. Cardy:

Q. Did you state your investment in the Tecumseh and the Boonville mines?

A. No, I didn't.

Q. Can you state approximately what it is in each point?

A. Well, that is a pretty difficult question to answer, Mr. Cardy.

Q. Well, if you haven't the figures, all right.

A. I don't have the definite figures.

Q. Did I ask you whether or not Boonville shipped any tonnage to amount to anything to points in Illinois during the past few years?

A. Did you say Boonville?

Q. Yes.

Mr. Biaett: You refer to his mine?

Mr. Cardy: Yes.

The Witness: And he refers to the Sunlight mine. Our largest movement into this territory from Sunlight has been to Chicago; but to the others in 1942 we shipped 33 tons to [fol. 2564] Belvidere, 1,082 to DeKalb, 260 tons to Dixon, 375 to Rochelle, 53 tons to Moline.

By Mr. Cardy:

Q. Did you ship any to Rockford or Freeport?

A. No.

Q. Do you think that the present freight rate adjustment level of rates, had anything to do with the lack of movement from Boonville to this district, this destination territory?

A. Yes, it did have.

Mr. Stadell: Did you state what year those figures were for?

The Witness: 1942.

Mr. Cardy: Is there anything further that you desire to say concerning this so-called maladjustment of the Milwaukee and the effect it has on the Tecumseh and the Sunlight

rates to this territory, in the way of constructing differentials?

The Witness: Well, it has disrupted the differential adjustment and to restore it I suggested that it would be proper to base the Boonville and Ayrshire district, as well as the Linton-Sullivan district, on the Milwaukee rates, rather than on the former rates as they are now based.

By Mr. Cardy:

Q. In other words, one carrier having a lower rate, and where you have a differential adjustment, and not following the adjustment through on a normal basis, it just increases your rates relatively, does it not?

A. That is correct.

[fol. 2565] Mr. Cardy: That is all.

By Mr. Kaylor:

Q. What do you estimate the truck movement is from the Wilmington mine to destinations, the distance?

A. From our mine it is something over 100,000 tons a year.

Q. That is tonnage, but how far does this truck movement extend in miles?

A. Of course, at the present time it is more restricted than formerly, but I would say 75 miles was generally the limit, although I have known of greater movements. I have known of movements clear into Michigan from our mine.

Q. You said the operation of the mine, the product, was sold within 150 miles?

A. Generally, yes.

Q. You know, of course, there is no truck regulation of rates in Illinois?

A. I do not understand there is any, no.

Q. It is a fact there isn't any.

A. Sir?

Q. There is no rate regulation for truck coal haulers.

A. That is what I thought.

Q. So that they can haul this for most anything they can get *it* for their handling it.

A. That is correct, and it has always been our policy to keep the tonnage on the railroads wherever we could.

Q. Has that kind of competition increased during the [fol. 2566] last few years?

A. Oh, yes, very materially.

Q. Do you expect it to continue to increase substantially, the truck movements?

A. I am afraid it will.

Q. You also think if the rates were increased, it will increase it further?

A. It will, yes, sir.

Mr. Kaylor: That is all.

Exam. Trezise: Any further questions?

By Mr. Cardy:

Q. Mr. May, are you familiar with the truck movement from Mononk, Illinois, to Rockford?

A. I was familiar with it, but I don't know what is going on at the present time. I do not even know if the Mononk mine is operating. I am under the impression it isn't.

Q. Is Mononk further away from Rockford than your mine at Wilmington?

A. Yes, it is further.

Q. About how far?

A. Oh, I would have to make a guess. I would say roughly 30 miles.

Q. Do you know of any other truck movement from some of these more distant mines to Rockford or Freeport during the past years, say prior to the war, or any of those Northern Illinois points that might be a little farther than Wilmington?

[fol. 2567] A. About the only other truck movement I would know of would be Braidwood, which is only a few miles south of Wilmington, and that is the Wilmington mines, and from the Morris Coal Mining Company at Morris, and from the Osage Mining Company at Peru, I believe it is.

Q. And you would say they truck all of it about 75 miles from those mines?

A. Just about.

Mr. Cardy: That is all.

Recross examination.

By Mr. Biaett:

Q. Mr. May, these long haul truck movements that you referred to are generally, are they not, return movements by truckers who have hauled commodities into Chicago?

A. No. Now, the case where I mentioned it went to Michigan, that was a case where they hauled freight to St. Louis, and I believe they stopped in at the mine and loaded with coal back. But I will say this, that trucker wanted to make a deal with us to haul coal regularly over into Michigan.

Q. This coal that is trucked from your mine generally moves direct to consumers, does it not?

A. Oh, yes, generally. In some cases though dealers haul coal into their yard and then distribute it from there.

Q. And coal which moves from your mine by rail generally moves to dealers, does it not?

A. Generally to dealers and steam plants.

[fol. 2568] Q. The fact you receive 75 cents more on coal which you ship by trucks makes it attractive to the operators to move coal by truck?

A. No, not in our case. We put that up as an arbitrary more to protect the rail movement than to encourage the truck movement.

Q. In other words, you lose a dollar a ton on coal in order to encourage the rail movement?

A. That is right.

Mr. Biaett: That is all.

Exam. Trezise: Is that true now?

The Witness: It is true, Mr. Examiner, as true as anything that has been said in this hearing.

Exam. Trezise: Now, in making your deliveries to the trucks, does it entail any more expense than making the delivery to the rails?

The Witness: No more expense except investment in equipment to load trucks. Now, one of the reasons that our truck movement is not heavier is that we have not provided the equipment at the mine to serve the trucks. We have never solicited a single truck movement, and we put that arbitrary on largely to protect the dealer who has an investment in equipment and serves the domestic consumer a good deal better than the truckers can do it. We have in mind further that we sell large quantities of coal to the railroads, and we feel they are entitled to some [fol. 2569] reciprocity in the way of commercial tonnage for that. So when I say we lose money by shipping by rail, it is correct.

I made an investigation a couple or three years ago of this territory adjacent to the mine where we were moving some 100,000 tons of coal a year, and it showed very clearly that we could move from 150,000 to 300,000 more by truck without any greater effort. All we would have to do would be to provide the bins and the roads.

Mr. Biaett: The roads?

The Witness: Yes, the roads into the bins, if you get what I mean. We have to have roads in the mines for the trucks to come in on. At present they all have to load on one road. As a result, when the domestic demand is heavy, those trucks have a good deal of difficulty getting up to the loading facilities to get a load of coal. Some of them come down in the winter at night, the night before, and sleep in their cab, so they can get a load out and get out in the morning.

Exam. Trezise: Any further questions?

By Mr. Cardy:

Q. Mr. May, assuming you fix the same rates for truckers as you do to your rail customers at Wilmington, and assuming you had good roads, what would happen as far as you are concerned?

A. The rail movement would decrease by the amount that the trucks could haul out.

[fol. 2570] Mr. Cardy: That is all.

By Exam. Trezise:

Q. Mr. May, you do not move much coal eastbound, do you, Ohio?

A. We don't move any, Mr. Examiner.

Q. How much do you move southbound to Kentucky?

A. Nothing. Our coal does not move south of the Ohio river.

Q. Is it a fact that your market, if any, is either in Illinois or through Illinois principally to other destinations?

A. That is correct.

Q. Would you think that the reason the groups over there in Indiana are crowded together in the way they are, as compared with the Illinois group, might have been brought about in order to market Indiana coal in more or less Illinois territory?

A. The rates were adjusted to enable the Indiana coal to move into Illinois territory, yes.

Q. I mean this, that the differentials between the Illinois groups for 150, 180 and 190 miles are from 50 cents upward. Whereas the difference between the rates to Rockford, Illinois, from the Brazil-Clinton and the Boonville group is 160 miles and the difference in the rates is 15 cents only.

A. That is correct.

Q. You say that you think, for example, that you should not pay more from your Wilmington mine going to the so-called suspended points than the Fulton-Peoria group, would you say that?

[fol. 2571] A. Yes, I would say that.

Q. Is that due to the fact that one exhibit shows here that the distance from Wilmington, Illinois, as compared with Fulton County, to the representative suspended points is 66 miles, that is, 66 miles greater from Fulton-Peoria, and the rate is 29 cents greater from Fulton-Peoria than from

Wilmington to these representative suspended points? Do you think that that situation is correct?

A. We do.

Q. In principle?

A. In principle, yes.

Q. Now, when you come over here to Indiana, with your Boonville group, going to one of the suspended points, Forreston, the rate from Southern Illinois is 5 cents greater than from Boonville and the distance though from Southern Illinois is 78 miles less than from Boonville; that you think is all right?

A. I don't think that that adjustment will move a great deal of Indiana coal, but I think it is perfectly proper.

Q. It is proper to have that situation over there, but not proper to have it in Illinois?

A. It depends on the basis for making the rates. It might be perfectly proper.

Q. All right, we will go to DeKalb, Illinois, and we will go from Southern Illinois—this is not a glaring example—[fol. 2572] but there is a rate of $2.00. The rate from Boonville, according to Exhibit 23, page 4, the rate is 1 cent less from Boonville than from Southern Illinois, but the distance from Southern Illinois is 34 miles less. Without going into detail, we will take on the next page, page 3 of the same exhibit, Byron. At Byron, Illinois, a similar situation exists. Now, with that in mind, would you say that such a situation might be the cause of some of the dissatisfied situations that have been explained here?

A. They might be looking at it only from the standpoint of mileage, but these rates were not constructed with mileage as the main factor. It is an adjustment that has grown up out of commercial conditions through many years of adjusting and readjusting, and while mileage is a factor in figuring or making freight rates, it is not necessarily the predominating factor that should be considered.

Q. Doesn't it depend greatly upon the direction the shipments are moving, whether or not the sacredness of these group relations should be determined?

A. It does. The direction of movement has a great deal of bearing on that.

Q. Well, from the Belleville district, for example, as compared with the Fulton-Peoria group, Belleville takes a differential over Fulton-Peoria going to this affected territory, you know that?

[fol. 2573] A. Yes.

Q. Well, in going to Missouri, Belleville doesn't take a differential over Fulton-Peoria going to Missouri destinations?

A. Missouri is not in a differential territory, as far as Belleville and Fulton County are concerned. There is and could be no movement from Fulton County, so the measure of the rate would be entirely immaterial, because there is no movement.

Q. So the farther distant group ordinarily, anyhow, with the one exception that has been pointed out here, or possibly two, are the only instances that you know where distance is disregarded with respect to the rate from groups, is that true? Can you point out any other instance of that kind?

A. Oh, many, yes. Take the Springfield district to Missouri versus the Belleville district. You have mines in the Springfield district that have the same rates as Belleville into Missouri, and they have the same Springfield rates into Chicago. Now, certainly those were not figured on distance.

Q. They have the same rates, but do they have rates that are 5 cents, 10 cents or 15 cents lower where distance has been disregarded? You say they take the same rates.

A. Well, the same general basis. There may be variations at individual destinations.

Q. Well then, do you think that much of the dissatisfaction here could be eliminated if distance were given more [fol. 2574] respect in this case by giving the Boonville group, for example, only the same rates as groups in Illinois that have a, well, say a less distance, for example, Southern Illinois?

A. Well, in that case I would say that if distance is to be considered a factor from Boonville it should also be considered a factor from each Southern Illinois mine of the same or greater distance. I don't just see how you could apply

strictly a mileage scale to bring about an adjustment that would be satisfactory to everybody, because these freight rates have not been built up on a mileage scale.

Q. Who in the world in this case ever dreamed of putting in any mileage scales as a proposition here in the canons of rate making? Who suggested it in this case? Have you heard the testimony? I haven't heard anyone suggest that we have mileage scales. Now, if we are going to do that, we are going to do it one way or the other, it seems to me, if we are ever to solve the problem. We are either going to ignore distance entirely and give the whole state of Indiana the same rate and possibly the whole state of Illinois the same rate. Now, would that remove the difficulty here?

A. No, sir. You can't ignore mileage entirely, nor can you give it 100 per cent value. We discovered that in the evaluating of coals delivered at the markets, under the pricing required by the Duffey Act, where it was necessary to make arbitrary adjustments to enable the different coals [fol. 2575] to compete, and that is just what has happened in the building up of this rate structure you have today. If you were to go to a strictly mileage scale, you would have to go to each individual mine and you would have a different freight rate from every mine in Illinois, Indiana and West Kentucky to every destination, because I don't think there is any case where they are identical, and that would certainly upset the economic distribution of coal.

Q. Do you mean the work that the boys have done here in calculating these average distances from the groups should be merely thrown out the window, and your idea of taking mileage, strictly mileage rates should apply, which you have suggested?

A. Oh, I haven't suggested that, Mr. Examiner.

Q. I didn't hear anybody else mention it but you.

A. Oh, I didn't suggest anything like that. I suggested quite to the contrary.

Mr. Cardy: Mr. Examiner, I think I can straighten out that thought.

Exam. Trezise: Well, I would like to straighten out one question and I am not going to ask any more. Do you think that groups that are nearer to the destination should have higher rates than the farther distant groups, which distant

groups have lower rates than the nearer distant groups? Now, just say yes or no, and if you want to explain it, go ahead.

The Witness: No. I don't think any explanation would [fol. 2576] be enlightening.

Exam. Trezise: All right, Mr. Cardy.

Mr. Cardy: Well, I thought that Mr. May conveyed the idea that by reason of the fact the Boonville group is a very small group and that the Southern Illinois is a large group, and when you get an average from each of those groups it is a very serious question whether or not the average distance in testing the reasonableness of the rate is proper.

Mr. Stadell: I object, Mr. Examiner. He has asked him the same question ten times.

Mr. Cardy: It is not the fault with the mileages, using the average mileages. It is brought about by a difference in group adjustment. In other words, we have large groups in Illinois and small groups in Indiana, and you have got to measure like with like.

Mr. Stadell: I object to him first leading the witness and telling him what the answer is and asking him to say, yes, and secondly, the question is repetitious. It has been asked fifteen times here.

Exam. Trezise: Now, just a minute, may we go off the record.

Mr. Cardy: I want to thoroughly understand this, and of course, Mr. May never suggested a mileage scale, but I say when you are going to test these rates and use an average distance, that you should compare like with like, like [fol. 2577-2630] group with like group.

Mr. Stadell: Can't you make your argument in your brief?

Mr. Cardy: Well, yes. I got it in here too, and I will put it in the brief.

Exam. Trezise: Do we have further questions?

Mr. Scott: Just one question, please.

Exam. Trezise: Mr. Scott.

By Mr. Scott:

Q. Mr. May, you have been asked questions with respect to Boonville, on the one hand, and Southern Illinois, on the other, and also with respect to Boonville, on the one hand, and Belleville, on the other, to the affected destination territory. Can you tell me whether or not your theory, from what you have said, whether I am correct in understanding your theory, that you cannot take one rate group and compare it with another in a large adjustment of this kind, but that all origin groups as a whole must be taken into consideration, or in other words, that if you compare the Boonville group with the Southern Illinois group you must likewise give consideration to the relationship between the Boonville group and the groups in Indiana to the north of it?

A. That is correct.

Mr. Scott: That is all, sir.

Exam. Trezise: If there are no further questions, you may be excused, and thank you, Mr. May.

(Witness excused.)

[fol. 2631] Harry A. Rozene, recalled in rebuttal:

Direct examination:

Mr. Stadell: We have some exhibits, Mr. Examiner, and a prepared statement which we want to distribute.

Exam. Trezise: The next exhibit will be No. 97.

Mr. Stadell: We will ask to have the exhibits marked off the record.

Exam. Trezise: All right.

(Exhibits 97 to 108, both inclusive, Witness Rozene, marked for identification.)

By Mr. Stadell:

Q. Will you please state your name?

A. Harry A. Rozene.

Q. Are you the same Harry A. Rozene who previously testified in these proceedings?

A. Yes, I am.

Q. When you were previously on the stand you were asked if you could relate or apply the criticisms which you made of the use of the Holmes and Hallowell scale for measuring the lawfulness of the rates involved to the use of that scale in the railroads' exhibits. Do you recall that question?

A. Yes, I do.

Q. What, if anything further, have you to say concerning that question and the answer which you gave?

A. My answer that I could not relate the criticisms which I made of the use of that scale to the use of such scale in the [fol. 2632] railroads' exhibits Nos. 3, 4, 11, and others in these proceedings, was obviously based upon a misunderstanding of the question asked, because that scale has been used in those exhibits for the purpose which I said it should not be used for, that is, it has been used to compare or measure the rates involved in these proceedings for short hauls in relation to those for long hauls.

To the extent that the Holmes and Hallowell scale has been used in the exhibits of the railroads or other parties in these proceedings for the purpose of measuring the comparative levels or lawfulness of the present or suspended rates for distances of 200 miles, for example, with those for distances of 350 or 400 miles, or from any two or more groups where the distances are not equal, the criticisms which I made fully apply and for the reasons stated, such comparisons, in my opinion, are without value.

As I previously stated, the Holmes and Hallowell scale could be used to compare the relationship between the rates from two or more groups from which the distance to a given destination was substantially the same, that is, where there was a variation of not more than 25 miles, for example, provided, of course, that the movement from both groups to such destination was through the same territory and was performed under substantially similar transportation conditions.

Q. During your previous testimony you were asked [fol. 2633] whether there are not five or six mines in the Southern Illinois group which could be operated but are not now operating and you replied, as I recall, that you did not know. Have you since made an investigation to determine whether there are any mines in that group which

could be operated and which are not being operated at the present time. If so, what did your investigation disclose?

A. I have made an investigation and have been unable to find any mines in the Southern Illinois group which could be put into operation under present conditions that are not now operating. The mines that are in operation in that group today are the same ones that have been operating for the past several years.

As I previously testified, however, such mines have been able to operate during the past several years before we entered the war but approximately half as many days as they could normally have operated had they had a market for the coal which they could have produced had they operated full time.

Q. You were asked by Mr. Wilkinson if it was your position that the Southern Illinois mines should have preferential rates to the Northern Illinois points involved in these proceedings because of the large losses which you testified they have suffered in the tonnages shipped by them to markets outside Illinois during the past several years. [fol. 2634] What, if anything further have you to say concerning that question?

A. We do not expect either the Illinois or Interstate Commerce Commission to approve or prescribe anything but lawful rates from the Southern Illinois or other Illinois groups, which we represent, to the Northern Illinois territory involved in these proceedings. By the same token, however, we insist that the Interstate Commerce Commission should not approve or prescribe the manifestly unlawful and preferential adjustment of rates from the Indiana mines, on the one hand, and the Illinois mines on the other, to such territory, which is sought by the Indiana mines, the Milwaukee Railroad, and the Southern Railway.

Mr. Wilkinson: Mr. Examiner, I move that the last sentence of that paragraph be stricken from the evidence, the designation "the manifestly unlawful and preferential adjustment of rates."

Mr. Stadell: We have no objection to correcting that sentence to read: "By the same token, however, we insist that the Interstate Commerce Commission should not approve or prescribe the adjustment of rates from the Indiana mines, on the one hand, and the Illinois mines on the other,

to such territory, which is sought by the Indiana mines, the Milwaukee Railroad, and the Southern Railway."

Exam. Trezise: All right.

The Witness: We also insist that neither the Interstate [fol. 2635] Commerce Commission nor the Illinois Commerce Commission should use the present relationships between the rates from the Indiana groups, on the one hand, and the Southern Illinois and other Illinois groups, on the other, to points in Wisconsin, Southeastern Minnesota, and Eastern Iowa, as a pattern for the relationship which should be established between the rates from the Indiana mines, on the one hand, and the Southern Illinois and other Illinois mines, on the other, to the Northern Illinois territory involved in these proceedings.

The testimony which I gave with respect to the large losses which have been suffered by the Southern Illinois mines during the past several years in the coal tonnages formerly shipped by them to points in Wisconsin, Minnesota, Iowa, South Dakota, Nebraska, Missouri, Michigan, and Indiana, was to show that such mines have to a great extent been pushed out of the markets in those states and back into Illinois, and that therefore the markets in Illinois are of much more importance to such mines today than they were several years ago.

By Mr. Stadell:

Q. Mr. Wilkinson asked you if you had not extended the line representing the northern boundary of the Southern Illinois group, which is shown on your Exhibit No. 20, too far north, and if there were any mines or tariff origin points located immediately south of such line so as to prevent it from being moved farther south. What, if anything, further, have you to say with respect to that matter?

[fol. 2636] A. The line representing the northern boundary of the Southern Illinois group, as shown on my map Exhibit No. 20, is correct. There is a mine located at Mason, Illinois, in the Southern Illinois group a short distance south of Mount Vernon and immediately south of the line which I have shown on my Exhibit No. 20, as representing the northern boundary of the Southern Illinois group. If this line were dropped any farther south it would

be south of this mine and would not correctly represent the northern boundary of that group.

Q. While we are discussing the boundaries of these groups, and remembering the argument of the Indiana producers that the Springfield group is the largest one in the midwestern coal field, what have you to say as to whether the boundaries of that group as shown on your Exhibit No. 20, might properly be changed?

A. By referring to my Exhibit No. 20, you will note that I have extended the northern boundary of the Springfield group clear up beyond Lincoln so as to include that point. I have also extended the boundary of such group a considerable distance south to include Edwardsville. Both Edwardsville and Lincoln are named as origin points in the railroads' tariffs. However, I have made an investigation and have found that there is no mine located at Lincoln, as the mine formerly located there has been closed down and abandoned. Nor is there any mine located north of the line [fol. 2637] of the Wabash from Springfield across to Decatur, Illinois. If Lincoln, Illinois, were eliminated, the northern boundary of the Springfield group would be dropped a considerable distance south and would extend straight across immediately above Springfield to Decatur. I have also found that the mine at Edwardsville in the southern portion of the Springfield group has been closed down and not operated for several years. Eliminating Edwardsville, the most southerly mine in the Springfield group would be that of the Mount Olive and Staunton Coal Company at Staunton, Illinois, which is approximately 17 miles north of Edwardsville, so that the line shown on my Exhibit No. 20, as representing the southern boundary of the Springfield group, should be moved approximately 17 miles north. The elimination of these two origin points at which no mines are located or in operation would very materially reduce the size of and area covered by the Springfield, Illinois group.

Mr. Scott has omitted the mileages and rates from the entire Evansville and so-called Bedford, Indiana groups from all of his exhibits, and has failed to include the mileages or rates from such groups to the representative suspended points in arriving at his average rates and mileages from the Indiana mines to such points, on the theory that while there are mines located in the Evansville and Bed-

ford, Indiana groups which are producing coal, such mines in his opinion do not ship coal to the Northern Illinois points [fol. 2638] here involved. As no coal whatever is being produced, and as none has been produced for a number of years at the origin points of Lincoln and Edwardsville in the Springfield, Illinois group, there is far more reason for excluding those points in determining the size of that group or in determining the average mileages from such group or from the Illinois groups as a whole to points in Northern Illinois, than there is for excluding the average mileages from the Evansville and Bedford, Indiana groups in arriving at the average mileages and average rates from the Indiana mines as a whole to such Northern Illinois points.

As shown in Section 8 of the railroads' Exhibit No. 4 in these proceedings, no coal whatever moved from the Centralia or Peoria, Illinois groups during either the last six months of 1941 or the first six months of 1942, and therefore, on Mr. Scott's theory, the rates and mileages from those two groups should also be excluded in arriving at the average rates and mileages from the Illinois mines as a whole to the Northern Illinois points involved.

Q. What, if anything, have you to say concerning the testimony of Mr. Scott that he objects to the use of the average distances over the shortest tariff routes for determining the lawfulness of the rates involved in these proceedings, because, in his opinion, such average mileages do not measure the minimum transportation service from the Illinois mines to such points?

[fol. 2639] A. Mr. Scott's position in this respect is surprising, in view of the fact that the mileages over the short tariff routes which he has used in computing his average short tariff route mileages from the Indiana mines to the Northern Illinois points involved do not represent the minimum transportation service from those mines to such points.

For example, the Pennsylvania Railroad serves 7 origin points in the Brazil-Clinton, Indiana group, namely, Brazil, Center Point, Seeleyville, Staunton, Stearleys, Terre Haute, and West Terre Haute, and three origin points in the Linton-Sullivan group, namely, Bicknell, Linton, and Templeton Mine 24. In arriving at the average short tariff route mileages shown in his exhibit from the Linton-Sullivan group to the Northern Illinois points involved, Mr. Scott

has used the mileage from the 3 origins named on the Pennsylvania in that group, via the Pennsylvania to Beehunter, Indiana, thence CMStP & P Railroad. From the 7 origin points named on the Pennsylvania Railroad in the Brazil-Clinton group he used the mileages over the Pennsylvania to Terre Haute, thence C.M.St.P.&P. In order that the Pennsylvania not be short-hauled on coal moving from these origin points on its line in the Brazil-Clinton and Linton-Sullivan groups to such Northern Illinois points, it is necessary for it to haul such coal to Chicago instead of merely to Beehunter or Terre Haute, and it is my understanding that is the route over which the coal from such origins to [fol. 2640] Northern Illinois points moves. My understanding on this point was confirmed by the testimony of the Milwaukee Railroad's operating witness in these proceedings.

If Mr. Scott had computed his average short tariff route mileages from these origins on the Pennsylvania in the Brazil-Clinton and Linton-Sullivan groups to the Northern Illinois points involved, via the route of the Pennsylvania to Chicago, thence Illinois Central or other railroad beyond, he would have obtained considerably greater average distances than those shown in his exhibits. For example, the average distance from origins on the Pennsylvania in the Linton-Sullivan group to Rockford via the route of the Pennsylvania to Beehunter, thence C. M. St. P. & P., which was used by Mr. Scott, is 303 miles, while the average distance from the same origins to Rockford via the route of the Pennsylvania to Chicago, thence Illincis Central, is 387 miles, or 84 miles longer.

The average distance from the Pennsylvania origins named in the Linton-Sullivan group to Freeport via the route of the Pennsylvania to Beehunter, thence C. M. St. P. & P., is 344 miles, while via the route of the Pennsylvania to Chicago, thence Illinois Central, the average distance from such origins to Freeport is 415 miles or 71 miles greater.

From the origins named on the Pennsylvania in the Brazil-Clinton group to Rockford the distance via the route of the Pennsylvania to Terre Haute, thence C. M. St. P. & [fols. 2641-2643] P., which was used by Mr. Scott in his exhibits, is 269 miles, while via the route of the Pennsylvania to Chicago, thence Illinois Central, the average dis-

tance from such origins to Rockford is 331 miles or 62 miles greater.

To Byron, Illinois, the average distance from the origins on the Pennsylvania in the Brazil-Clinton group is 266 miles via the route of the Pennsylvania to Terre Haute, thence C. M. St. P. & P., which was used by Mr. Scott in his exhibits, and 332 miles or 66 miles greater via the route of the Pennsylvania to Chicago, thence C. G. W.

If Mr. Scott had used the distances from the 7 origins named in the Brazil-Clinton group on the Pennsylvania, via the route of that road to Chicago thence the Illinois Central or C. G. W. beyond, in arriving at his average short tariff route distances from the Brazil-Clinton group to Rockford and Byron, his average short tariff route distances from the entire Brazil-Clinton group to such points would be 17 miles greater than those shown in his exhibits in these proceedings.

The average distance from the origins named on the Pennsylvania in the Linton-Sullivan group to Byron is 299 miles via the route of the Pennsylvania to Beehunter, thence C. M. St. P. & P., which was used by Mr. Scott in his exhibits, and it is 388 miles or 89 miles longer via the short tariff route, which must be used if the Pennsylvania is not to be short-hauled via that road to Chicago, thence C. G. W.

[fol. 2644] Exam. Trezise: Gentlemen, when you are ready, we will begin.

HARRY A. ROZENE, resumed:

Direct examination (Continued).

Exam. Trezise: Let us discuss this last thing off the record before we put it on the record.

(Discussion outside the record.)

Exam. Trezise: I think we will let this last statement go in as it is, and if you have any objection, why, you can argue that in your brief, Mr. Wilkinson.

Mr. Zoll: Do you want that to read "short or shortest tariff route"?

Exam. Trezise: Is that correct, Mr. Stadell?

Mr. Stadell: That is right. It will read now "89 miles longer than via the short or shortest tariff route, which must be used," and so on.

Exam. Trezise: All right, proceed.

The Witness: I also want to direct the Commission's attention to the fact that these so-called short tariff routes [fol. 2645] from the Indiana mines to points in Northern Illinois, which greatly short haul the origin carrier, that is, for example, those which I have referred to via the Pennsylvania from origins on its line in the Brazil-Clinton and Linton-Sullivan groups to Beehunter or Terre Haute, thence the C. M. St. P. & P. beyond, were established by the railroads serving the Indiana mines after the complaint was filed in Docket No. 25595, and it is obvious that such routes were established for the purpose of enabling such railroads and the Indiana mines to compute much shorter average short tariff route distances to use in comparison with those from the Southern Illinois and other Illinois groups than they could compute from the Indiana mines if they used the mileages over the short tariff routes over which the coal from such mines to such points actually moves.

Mr. Wilkinson: Mr. Examiner, I move to strike that portion of the sentence beginning with the words, "and it is obvious."

Exam. Trezise: I think that might be objectionable there. "it is obvious that such routes were established for the purpose of enabling such railroads," and so on. That is argument.

Mr. Stadell: We have no objection to striking it out.

Exam. Trezise: Strike that out.

Mr. Wilkinson: Strike out everything after the "Docket No. 25595."

[fol. 2646] Mr. Stadell: That is right.

Exam. Trezise: All right, strike it out.

Mr. Stadell: It is all right with me.

Exam. Trezise: To the bottom of the page, or does it go to the bottom of the page?

Mr. Wilkinson: Yes, it goes to the bottom of the page, that argument.

Exam. Trezise: All right, strike that out.

The Witness: The illustrations which I have given clearly indicate, in my opinion, that the average short tariff route distances contained in Mr. Scott's exhibits from the Indiana mines to the Northern Illinois points involved in these proceedings do not, as he would have the Commission believe, represent the minimum transportation service from such mines to such points. It is our position that the average shortest tariff route mileages shown in my exhibits from the Southern Illinois group to such points come as close or closer to representing the minimum transportation service from such mines to such points than do the average short tariff route distances shown in Mr. Scott's exhibits from the Indiana mines to such points.

By Mr. Stadell:

Q. Right there, Mr. Rozene, can you give us the average distance from the seven origin points on the Pennsylvania Railroad in the Brazil-Clinton group to Terre Haute, to Chicago, and to Beehunter, if the route from those origin points [fol. 2647] applies via Beehunter?

A. From the seven origin points in the Brazil-Clinton district located on the Pennsylvania the distance to Terre Haute is 12 miles. From the same points to Chicago it is 244 miles.

Q. And those distances are over the Pennsylvania in each instance?

A. Yes, sir.

Q. From those origins over the Pennsylvania to Terre Haute; then from those origins over the Pennsylvania to Chicago?

A. Yes, sir; and from the three mines in the Linton-Sullivan group located on the Pennsylvania the distance to Beehunter is 14 miles and to Chicago 300 miles.

Q. In other words, if the Pennsylvania hauled the coal from those seven mines or origin points on its line in the Brazil-Clinton group to Terre Haute, it would secure a haul of but 12 miles?

A. Yes, sir.

Q. But if it hauled the coal to Chicago it would secure a haul of 244 miles you stated?

A. Yes, sir.

Q. I believe you stated that Mr. Scott in his exhibits had included the distance from Templeton Mine No. 24, which is one of the three origins in the Linton-Sullivan district, in securing his average mileages. Isn't it true he indicated in his exhibits there was no mileage published from that [fol. 2648] mine and he did not include it?

A. He did not include it, yes, sir.

Q. Are there mileages published from that Templeton Mine No. 24 which could be used for securing the average distance from that point?

A. Yes, sir.

Q. Could you give us that tariff authority?

Mr. Wilkinson: And the date of publication, Mr. Rozene, while you are getting it.

The Witness: It is in the record.

Mr. Stadell: It is in the record?

The Witness: Yes. Mr. Biaett called his attention to it.

Mr. Scott: There was no date of publication given.

The Witness: I don't believe I have reference to that supplement with me. I left it in the office.

Mr. Stadell: Well, will you supply that?

The Witness: Yes, I will be very glad to do that.

By Mr. Stadell:

Q. You previously referred to the present relationship between the rates from the Southern Illinois group, on the one hand, and the Indiana groups on the other, to points in Minnesota, Iowa, and Wisconsin, which you stated should not be used as a basis for the relationship between rates from such groups to the Northern Illinois territory involved. Have you prepared an exhibit showing the differences in the average short tariff route distances from [fol. 2649] the Southern Illinois group, on the one hand, and the Indiana groups on the other, to the points referred to?

A. Yes, I have prepared such an exhibit, and it has been marked No. 97.

Q. Will you please explain what this exhibit shows?

A. Page 1 of this exhibit shows the average short tariff route mileages from the Southern Illinois group, on the one hand, and the Brazil-Clinton, Linton-Sullivan, Princeton Ayrshire, and Boonville Indiana groups, on the other, to 21 representative points in Minnesota, and the amount by which the average distance from the Southern Illinois group is longer or shorter than from each of the Indiana groups named.

Page 2 shows the same information from such groups to 28 individual representative points in Eastern Iowa.

Page 3 shows the same information to 21 representative points in Wisconsin, and Page 4 shows the same information with respect to the average short tariff route mileages from each of such groups to the 12 representative suspended Northern Illinois points used by the railroads and by ourselves and others in the rate and mileage exhibits in these proceedings.

Turning back to page 1 of Exhibit No. 97, it will be noted that the average distance from the Brazil-Clinton, Indiana group to the 21 representative Minnesota points shown is but 69 miles less than from the Southern Illinois group, and that the average short tariff route distances from the Lin-[fol. 2650] ton-Sullivan, Indiana group is but 44 miles less than from the Southern Illinois group. For a difference in average distance of 64 miles between the Illinois groups to destinations in Iowa, the Commission in the Midland Electric Case prescribed a differential of but 10 cents per ton.

To all of the 21 representative Minnesota points shown on page 1 of this exhibit, however, the present rates from the Brazil-Clinton, Indiana group are 30 cents per ton lower, and from the Linton-Sullivan group 20 cents per ton lower than the present rates from the Southern Illinois group.

Page 1 of this exhibit also shows that the average short tariff route mileage from the Princeton-Ayrshire, Indiana group to every one of the 21 Minnesota points shown exceeds the average short tariff route mileage from the Southern Illinois group by from 16 miles to 48 miles, and to all

of the 21 points the average distance from the Southern Illinois group is 30 miles less than from the Princeton-Ayrshire group, but the present rates to all of such Minnesota points from the Southern Illinois group are 13 cents per ton higher than from the Princeton-Ayrshire group.

From the Boonville, Indiana group, the average distance to the 21 Minnesota points shown exceeds those from the Southern Illinois group by 79 miles, but the rates from the Boonville group to all of such points are 10 cents per ton lower than from the Southern Illinois group. In other [fol. 2651] words, while the Brazil-Clinton group is accorded a 30 cent per ton lower rate to these Minnesota points than is the Southern Illinois group for an average distance of 69 miles less, the Southern Illinois group must pay a rate 10 cents per ton higher than the Boonville group, although its average distance is 79 miles less than from the Boonville group.

On page 2 of my Exhibit No. 97, it is shown that the average short tariff route distance from the Princeton-Ayrshire, Indiana group is 41 miles greater and from the Boonville, Indiana group 98 miles greater than from the Southern Illinois group to the 28 representative Iowa points shown, but I wish to point out that the present rates from the Southern Illinois group to such points, despite its much shorter mileage, is 13 cents per ton higher than from the Princeton-Ayrshire group and 10 cents per ton higher than from the Boonville group.

In other words, although an average of 41 miles more transportation service is performed by the railroads in hauling coal from the Princeton-Ayrshire group to the representative Iowa points shown, and 98 miles more transportation service is actually performed by them from the Boonville group than from the Southern Illinois group to such points, the present rates from the Princeton group to such points are 13 cents per ton lower, and from the Boonville group 10 cents per ton lower than from the Southern Illinois group, and it is this relationship which the Indiana producers and the Southern Railway want extended to [fol. 2652] points in Northern Illinois.

The average distance from the Brazil-Clinton group to the 21 Iowa points is but 60 miles less than from the Southern Illinois group, yet the rate from such Indiana group to such points is 30 cents per ton lower than from the Southern Illinois group. For a difference in average distance of 64 miles between the Illinois groups to Iowa, the Commission prescribed a differential of but 10 cents per ton in the Midland Electric Cases.

As shown on page 3 of this exhibit, the average short tariff route distance from the Princeton-Ayrshire, Indiana group is actually 20 miles longer and from the Boonville, Indiana group 70 miles longer than from the Southern Illinois group to all of the 70 representative points shown in Wisconsin, Southeastern Minnesota, and Eastern Iowa, but —and I wish to stress this unusual fact—the present rates from the Princeton group are 13 cents per ton lower, and from the Boonville group 10 cents per ton lower than from the Southern Illinois group. It is this relationship which utterly disregards mileages, transportation conditions, and every other transportation standard that the Indiana mines desire to have the Interstate and Illinois Commissions adopt in these proceedings.

It is our position that this rate adjustment, on its face, is unduly prejudicial to the Southern Illinois mines and [fol. 2653] unduly preferential of the mines in the Princeton, Boonville, and other Indiana groups, in violation of Section 3 of the Act, as that section of the Act was recently interpreted by the Commission in its decision in Northeast Kentucky Coal Bureau versus Chesapeake & Ohio Railroad Co., 201 ICC 165; 206 ICC 445; and being unduly prejudicial and unduly preferential, it obviously should not be used in any way in determining what the relationship between such Indiana groups, on the one hand, and the Southern Illinois or other Illinois groups, on the other, should be to points in Northern Illinois.

Mr. Wilkinson: Now, I move that that portion of the statement following the ICC decision be stricken as being purely argumentative.

Mr. Stadell: That may be argumentative, but it is so obvious, Mr. Examiner, from the facts that there can't

be any doubt about it. In other words, when transportation conditions are admittedly the same and they charge 10 or 13 cents lower rate from one group than from another group which *are* immediately adjacent, for 98 miles less transportation service, that is on its face manifestly unduly preferential and unduly prejudicial. That is a statement of his position in that regard.

Exam. Trezise: Let us take this off the record.

(Discussion outside the record.)

Mr. Stadell: Very well, let us change that sentence, beginning after the citation of the Commission's decision and [fol. 2654] ending with the 445. We will put a period there. Then we will say: "It is therefore our position that this rate relationship between the Indiana groups, on the one hand, and the Southern Illinois groups, on the other, should not be used in any way in determining what the relationship between such groups should be to points in Northern Illinois."

All right, proceed, Mr. Rozene.

Exam. Trezise: Does the reporter have that in mind now?

The Reporter: Yes.

The Witness: On page 4 I have shown a recapitulation of the average short tariff route distance from the Southern Illinois group, on the one hand, and the four Indiana groups named, on the other, to all of the 70 representative points in Minnesota, Iowa, and Wisconsin, and to the 12 representative Northern Illinois points.

It will be noted that the average short tariff route distances from the Brazil-Clinton, Indiana group to this entire territory, including Northern Illinois, Wisconsin, Southeastern Minnesota, and Eastern Iowa is but 81 miles less than from the Southern Illinois group, and the average distance from the Linton-Sullivan, Indiana group to such territory is but 52 miles less than from the Southern Illinois group.

Based upon the differentials prescribed by the Interstate Commerce Commission between the Illinois groups in the Midland Electric Case, and based upon the differentials pre-

[fol. 2655-2656] scribed by it in other cases, the differential between the Brazil-Clinton, Indiana group, on the one hand, and the Southern Illinois group on the other, to this entire Northern Illinois and Northwest territory should not be more than 15 cents per ton for the average difference in the short tariff route distances of 81 miles.

Mr. Wilkinson: I want to move that that be stricken unless the witness states that as his opinion. You stated it here as a bald fact. I say it is again argumentative.

Exam. Trezise: I think that everything the witness says is his opinion based upon his qualifications. I think I am right on that.

Mr. Wilkinson: Well, if it is taken that way, that that is merely an expression of the witness' opinion, all right.

Exam. Trezise: It is his opinion, and when he draws a conclusion of that kind, I believe it is the opinion of the witness based on his qualifications.

Mr. Wilkinson: All right, with that understanding, I withdraw the objection.

The Witness: This differential of 15 cents per ton for the longer average distance of 81 miles from the Southern Illinois group is shown to be fully justified and proper when measured by the differentials which the Indiana producers contend are proper to this entire Northwest territory, including Northern Illinois, between the Indiana groups themselves.

[fol. 2657-2658] Exam. Trezise: Mr. Hunter.

Mr. Hunter: Those rates to the entire Northwest territory you referred to are not involved in this proceeding.

Mr. Stadell: Mr. Scott brought them in, on a big map, showing the territory.

Exam. Trezise: Well, the Examiner will accept the statement as modified.

Mr. Kaylor: Off the record.

(Discussion outside the record.)

Exam. Trezise: We will accept that statement as it was modified by Mr. Stadell. Go ahead.

Mr. Wilkinson: Exception, please.

The Witness: For example, it will be noted from page 4 of my Exhibit No. 97 that the average short tariff route distance from the Princeton-Ayrshire, Indiana group to all of the 82 representative Illinois, Wisconsin, Minnesota and Iowa destinations is 69 miles longer than from the Linton-Sullivan group.

[fol. 2659] The Witness: For this difference in distance, the Indiana producers contend that a 7 cent differential is proper. The average distance from the Princeton-Ayrshire, Indiana group to such points is 98 miles longer than from the Brazil-Clinton, Indiana group. For this difference in distance, the Indiana producers contend that a 17 cent per ton differential is proper and lawful. It will also be found that the average distance from the Boonville group to such 82 points is 116 miles longer than from the Brazil-Clinton, Indiana group, and for this difference the Indiana producers contend that a 20 cent per ton differential is proper.

The differentials which I have named between the Indiana groups are already in effect for substantially the same differences in distances between those groups which I have given to the 70 representative points in Wisconsin, Iowa, and Minnesota, shown in my Exhibit No. 97.

Page 4 of this exhibit also shows that the average short tariff route distance from the Princeton-Ayrshire, Indiana group to all of the 82 representative points shown in Northern Illinois, Wisconsin, Iowa, and Minnesota, is actually 17 miles longer, and from the Boonville, Indiana group 64 miles longer than from the Southern Illinois group, yet the Indiana producers are contending in these proceedings [fol. 2660] that these substantially longer distances from the Princeton and Boonville groups than from the Southern Illinois group, which actually require that much additional transportation service from such Indiana groups than from the Southern Illinois group, should be not only totally disregarded, but that the Princeton-Ayrshire and Boonville groups should be accorded rates to such points

that are 13 cents per ton lower and 10 cents per ton lower respectively than are accorded the mines in the Southern Illinois group to such points.

Exam. Trezise: Isn't that analyzing what the Indiana and Illinois shippers are contending? Now, it seems to me you are supposed to give your facts. It seems to me that this sentence, "Yet the Indiana producers are contending in these proceedings," and so on, that that rightfully belongs in a brief. Now, if you are going to analyze their testimony, you may be analyzing everybody else's testimony in the case. Now, that is just plain argument, I think. This ought to go in a brief, Mr. Stadell.

Mr. Stadell: What portion are you referring to, Mr. Examiner?

Mr. Wilkinson: The whole paragraph, I would say.

Mr. Stadell: No, not what page 4 of the exhibit shows. That stays in.

Mr. Zoll: From, "yet the Indiana producers," and so on.

Mr. Stadell: All right, we are willing to strike that from [fol. 2661] the record, the words following, "yet the Indiana producers," Mr. Examiner, to the balance of the sentence.

Exam. Trezise: All right.

By Mr. Stadell:

Q. Where did you obtain the average short tariff route mileages shown in your Exhibit No. 97?

A. I obtained the average short tariff mileages from the Southern Illinois and Indiana groups to the 70 representative points shown in Wisconsin, Iowa, and Minnesota, from the appendix to the Commission's report in Docket No. 25595, 204 ICC 225, and I obtained the average short tariff route mileages from the Southern Illinois and Indiana groups to the 12 representative Northern Illinois points from the railroads' Exhibits Nos. 3 and 4 in these proceedings.

(Exhibit No. 97, Witness Rozene, received in evidence.)

Q. During the course of these hearings, the presiding Interstate Commerce Commission Examiner asked one of the

railroad witnesses if he knew of any rate in the adjustment involved here as low as the present rate of $2.10 per ton from the Southern Illinois group to Rockford for an average short tariff route distance of 369 miles. Do you recall that question, and if so, what, if anything, have you to say concerning it?

A. Yes, I do, and I have prepared an exhibit which has been marked No. 98, showing that most of the present rates from the Princeton and Boonville, Indiana groups to the [fol. 2662] points involved in Northern Illinois are lower than the present rate from the Southern Illinois group to Rockford, although the average distances from such groups are longer than from the Southern Illinois group to Rockford. I have also shown on this exhibit the rates from the Western Kentucky group to some of such Illinois points.

By Exam. Trezise:

Q. Now, these rates are all the present rates, is that true?
A. Yes, sir.
Q. You haven't mixed up the proposed rates with that?
A. No, these are all present rates.

Exam. Trezise: Thank you.

The Witness: From this exhibit it will be noted that rates as low as $2.01 per ton are maintained from the Princeton, Indiana group to the Northern Illinois points shown, for an average short tariff route distance of 396 miles, this rate being 9 cents per ton lower than from the Southern Illinois group to Rockford, and the average distance from the Princeton, Indiana group being 27 miles greater.

From the Boonville, Indiana group the present rates are as low as $2.04 per ton for an average distance of 431 miles, or 6 cents per ton lower than the present rate from the Southern Illinois group to Rockford, while the average distance from the Boonville group for which the $2.04 rate applies, is 62 miles longer than the average distance from [fol. 2663] the Southern Illinois group to Rockford.

I have also indicated the percentage that the rates shown from the Southern Illinois, Princeton, Boonville, and Western Kentucky groups are of the Holmes and Hallowell scale,

the Midland scale, and 23922 scale, as well as the ton-mile earnings that are produced by each of such rates for the average distance shown. The rates and short tariff route mileages which I have used in this exhibit are taken from the railroads' Exhibit No. 4 in these proceedings.

Under the proposal of the Indiana producers, many of the present low rates from the Princeton and Boonville, Indiana groups to the Northern Illinois points involved would be further reduced. Mines in the Western Kentucky group are served only by the Louisville and Nashville and Illinois Central Railroads, and the Commission found in its very recent decision in Docket No. 28629 Commonwealth of Kentucky versus Illinois Central Railroad, that 85 per cent of the coal from the Western Kentucky mines to Chicago moves over the Illinois Central.

By Mr. Stadell:

Q. Now, you made an investigation, did you not, at the time just shortly before the hearing in that case was held to determine what proportion of the total Western Kentucky tonnage to Chicago and the Northwest moved over the Illinois Central, and what proportion moved over the Louisville and Nashville?

A. That was shown in the evidence presented in those cases.

[Vol. 2664] Q. What proportion did you find moved over the Illinois Central?

A. I think it was considerably more than—what was the question there? Probably I did not understand you.

Q. What proportion did you find moved over the Illinois Central and what proportion over the Louisville and Nashville?

A. Well, that is shown very definitely in the evidence in that case, but I can't recall just what proportion moved to the Northwest.

Q. All right, you can check it up and we will furnish it later.

A. Yes. The average short tariff route distance from all mines on the Illinois Central in the Western Kentucky group to Chicago is 442.1 miles. It was also found in such

case that the weighted average haul from the Western Kentucky group to Chicago is 419 miles. In such case the Commission prescribed a maximum reasonable rate from the Western Kentucky group to Chicago of $2.30 per ton, which is 10 cents per ton lower than the present rate from such group to such point.

(Exhibit No. 98, Witness Rozene, received in evidence.)

Exam. Trezise: If that is a good place to stop, we will have a short recess, please.

(A recess was taken.)

Exam. Trezise: Proceed, gentlemen.

By Mr. Stadell:

Q. Have you any information with respect to the com- [fol. 2665] parative tonnages that have been shipped during any year from the Indiana mines, on the one hand, and the Illinois mines on the other, to any of the representative points in Northern Illinois?

A. Yes, I have prepared an exhibit which shows the number of tons of coal shipped from the Illinois and Indiana mines during the years 1936 and 1941, to Beloit, Wisconsin, and seven of the representative Northern Illinois points used by the railroads in their exhibits in these proceedings. This exhibit has been marked No. 99.

Q. Will you please explain what this exhibit shows and also why you used the years 1936 and 1941?

A. There is no source that I know of, except the railroads, from which information can be obtained showing the number of tons of coal shipped from the mines in Illinois or Indiana to any of the individual representative points in Northern Illinois or Wisconsin. However, in these proceedings, the railroads in their Exhibit No. 4, section 8, shows the number of tons of coal shipped to Beloit, Wisconsin, and seven of the representative Northern Illinois points from the Illinois and Indiana mines during the year 1941. Those are the figures which I have shown for 1941 on my Exhibit No. 99. The figures shown on this exhibit representing the tonnage shipped from the Illinois and Indiana mines to such points during 1936 were taken from Exhibit No. 10, which was presented by the petitioning and

[fol. 2666] respondent railroads in these proceedings, in I. & S. Docket No. 4360.

From my Exhibit No. 99 it will be noted that to Rockford, Illinois, for example, the tonnage from the Illinois mines increased but 68,072 tons or 32.7 per cent during the period 1936 to 1941, while the tonnage from the Indiana mines increased from 51,347 tons in 1936 to 211,561 tons in 1941, an increase of 160,214 tons or 312 per cent.

To Beloit, Wisconsin, and all of the seven representative Illinois points shown, the tonnage from the Illinois mines increased but 16,718 tons or 2.6 per cent during the period 1936 to 1941, while the tonnage from the Indiana mines increased 163,443 tons or 104.3 per cent.

Excluding Beloit, the increase from the Indiana mines was still greater, being 121.4 per cent as compared with an increase of but 4 per cent during the same period in the tonnage from the Illinois mines.

(Exhibit No. 99, Witness Rozene, received in evidence.)

Q. You were asked by Mr. Wilkinson whether a major portion of the 1,526,031 tons of coal which you stated was shipped from the Southern Illinois group to points in Indiana in 1923 was not shipped to Gary, Indiana, and you replied, as I recall, that you did not know. Have you made any further investigation with respect to this matter, and if so, what, if anything further, have you to say in regard to it?

[fol. 2667] A. The testimony which I presented showing that the Southern Illinois mines shipped 1,526,031 tons of coal to destinations in Indiana in 1923, and but 78,992 tons of coal to destinations in such state in 1941, was obtained from the reports of the Illinois-Indiana Coal and Coke Committee, which is the railroad committee that compiled such statistics. That report indicates that of this total tonnage from the Southern Illinois group to points in Indiana in 1923, 243,653 tons moved to South Bend, 10,574 tons moved to Indianapolis, 8,788 tons moved to Fort Wayne, 10,576 tons moved to what are described as the Gas Belt points in Indiana, and 1,252,440 tons moved to miscellaneous destinations in that state. I have been unable to ascertain whether any of this 1,252,440 tons moved to Gary. Our member companies have advised me, how-

ever, that this tonnage was shipped to numerous destinations in Indiana.

Q. Have you an exhibit showing the number of tons of coal shipped from each of the origin groups in Illinois and Indiana to destinations in Indiana during the years 1923 to 1941, inclusive?

A. Yes, I have such an exhibit and it has been marked No. 100.

Q. Will you please explain what this exhibit shows.

A. Page 1 of this exhibit shows the total number of tons of large coal and the total number of tons of fine coal, and of both large and fine coal from all of the Illinois mines to all destinations in Indiana, except those in the Chicago [fol. 2668] switching district, during the years 1923 to 1941, inclusive, and also the same information with respect to the large and fine coal tonnage and the total of both from the Southern Illinois group to such points.

While the Illinois mines shipped 2,826,440 tons of coal to Indiana in 1923, this had shrunk to but 230,477 tons in 1941, the 1941 tonnage being but 8.2 per cent of that in 1923. The number of tons shipped from the Southern Illinois group to points in Indiana in 1941 was but 5.2 per cent of the 1923 tonnage.

The same character of information is shown on page 1-A for the Fulton-Peoria and Central Illinois or Springfield, Illinois groups.

Page 1-B shows the same information for the Belleville, Danville, and DuQuoin, Illinois groups.

Page 2 shows the number of tons of coal shipped from all mines in Indiana to destinations in that state, except those in the Chicago switching district, during the years 1923 to 1941, both inclusive.

While the total tonnage from all of the Illinois mines to all points in Indiana, except those in the Chicago switching district, in 1941 was but 8.2 per cent of the 1923 tonnage, and from the Southern Illinois group but 5.2 per cent of the 1923 tonnage, the total tonnage from the Indiana mines to such points in 1941 was 77.8 per cent of the 1923 tonnage [fol. 2669] from such mines to such points.

On page 2-A the number of tons of large and fine coal and the total of both which were shipped during the years 1923 to 1941, inclusive, from the Princeton and Boonville, Indiana groups, and from both of those groups combined

to all points in Indiana, except those in the Chicago switching district, during the years 1923 to 1941 are shown. The 1941 tonnage from the Princeton group, for example, was 214.4 per cent of the tonnage from that group to such Indiana points in 1923.

(Exhibit No. 100, Witness Rozene, received in evidence.)

Q. Have you prepared an exhibit showing the total number of tons of large and fine coal shipped during the years 1923 to 1941, inclusive, from the various origin groups in Illinois and Indiana to other destinations?

A. Yes; I have prepared such an exhibit, and it has been marked No. 101.

Q. Will you please explain what this exhibit shows?

A. Pages 1, 1-A, and 1-B show the total number of tons of large coal, total number of tons of fine coal, and of both shipped from all Illinois mines and from each of the Illinois groups during the years 1923 to 1941, both inclusive, to all destinations. The same information is shown on pages 2 and 2-A with respect to the large and fine coal tonnage from the Indiana mines and from the Linton-Sullivan, Brazil-[fol. 2670] Clitnon, Princeton, and Boonville, Indiana groups, and from the Princeton and Boonville groups combined, to all destinations during the years 1923 to 1941.

Page 2-A shows that the 4,949,381 tons of coal shipped from the Princeton group in 1941 to all destinations was 39.6 per cent of the total coal shipped from all Indiana mines to all destinations, and that the 5,855,313 tons shipped from the Princeton and Boonville groups combined to all destinations during that year was 46.8 per cent or almost one half of the total number of tons shipped from all mines in Indiana to all destinations during that year.

On pages 3 and 3-A of this exhibit I have shown the number of tons of coal shipped from the Indiana mines and from each of the Indiana groups to all destinations, except those in Indiana, during each of the years 1923 to 1941, both inclusive.

Pages 4, 4-A, and 4-B show the number of tons of large coal, number of tons of fine coal, and of both, shipped from all of the Illinois mines and from each of the Illinois groups to all destinations in Illinois, except those in the Chicago switching district, during the years 1923 to 1941, both inclusive.

Page 4 indicates that the 1941 tonnage from the Southern Illinois group to all points in Illinois, except those in the Chicago switching district, was but 25 per cent of the total number of tons of coal shipped from all of the Illinois mines [fol. 2671] to such points during that year.

In 1941, the Southern Illinois mines shipped approximately 450,000 tons of coal to Alton, Illinois, which is included in the total shown on page 4 of this exhibit of 3,497,010 tons. This 450,000 tons of coal, however, was not consumed at any point in Illinois but was loaded into barges and was moved up the Mississippi River to such points as Red Wing, Lake City, Winona, St. Paul, and Minneapolis, Minnesota. Deducting this 450,000 tons from the 3,497,010 tons which is shown on page 4 of such exhibit as having been shipped from the Southern Illinois mines to points in Illinois in 1941, leaves a total of but 3,047,010 tons which was shipped from such mines to such points. This 3,047,010 tons was but 21.8 per cent of the total of 13,965,737 tons shipped from all Illinois mines in 1941 to all points in Illinois, except those in the Chicago switching district.

On pages 5 and 5-A of this exhibit I have shown the total number of tons of large coal and fine coal and of both shipped from all mines in Indiana and from the Linton-Sullivan, Brazil-Clinton, Princeton, and Boonville groups and from the Princeton and Boonville groups combined to all destinations in Illinois, except those in the Chicago switching district, and except East St. Louis, Illinois.

Pages 6 and 6-A of such exhibit show the total number of tons of large and fine coal shipped from the Indiana [fol. 2672] mines and from each of the four Indiana groups named and from the Princeton and Boonville, Indiana groups combined, to the Chicago switching district during the years 1923 to 1941, both inclusive.

The Indiana producers are contending in these proceedings that the mines in the Princeton and Boonville groups could not compete with the mines in the Linton-Sullivan and Brazil-Clinton groups at the Northern Illinois points involved if the differentials are greater than 17 cents per ton, Princeton over Brazil-Clinton, 7 cents per ton, Princeton over Linton-Sullivan, 20 cents per ton, Boonville over Brazil-Clinton, and 10 cents per ton, Boonville over Linton-Sullivan. In the Illinois-Indiana Coal Cases, 128 ICC 265,

the Interstate Commerce Commission prescribed rates from the Brazil-Clinton and Linton-Sullivan groups to Chicago, which increased the differentials then existing between those groups, on the one hand, and the Princeton and Boonville groups on the other, which were the same as I have just stated, 5 cents per ton. These increased differentials became effective in October, 1927.

Page 6-A of my Exhibit No. 101 shows that while the Princeton and Boonville, Indiana groups combined were shipping but 23.3 per cent of the total tonnage from the Indiana mines to the Chicago switching district in 1926, and but 26.8 per cent in 1927, the tonnage from those two groups to such district in 1941 was 48.3 per cent or almost [fol. 2673] one half of the total tonnage shipped from all mines in Indiana to such district.

On pages 7 and 7-A I have shown the number of tons of coal shipped from Indiana and from the four Indiana groups named to all destinations in Illinois, including those in the Chicago switching district, but excluding East St. Louis, Illinois, during the years 1923 to 1941, both inclusive. It will be noted from page 7 of such exhibit, that while the Brazil-Clinton group shipped 44.3 per cent of the total tonnage to such destinations from all mines in Indiana in 1923, it shipped but 19.3 per cent of the total Indiana tonnage to such destinations in 1941. Contrasted with this, the Princeton group in 1941 shipped 38 per cent of the total Indiana tonnage to such points and the Princeton and Boonville groups combined shipped 43.5 per cent of the total tonnage from all Indiana mines to such points.

Pages 8, 8-A, and 8-B show the total number of tons of coal shipped from all of the Illinois mines and from each of the Illinois groups to all destinations in Illinois, including those in the Chicago switching district, but excluding East St. Louis, Illinois, during the years 1923 to 1941, and the percentage that the tonnage from each of such groups was of the total from all of the Illinois mines. The 450,000 tons of coal which I previously mentioned as having been shipped from the Southern Illinois group to Alton for [fol. 2674] trans-shipment to points outside of Illinois by barge, is included in the 5,879,972 tons which is shown on page 8 as having been shipped from the Southern Illinois mines to destinations in Illinois, including those in the Chicago switching district, and such barge tonnage should

be deducted in order to arrive at the tonnage that was actually shipped from the Southern Illinois group to such Illinois points in 1941.

The Southern Illinois mines began to ship some coal to Alton and East St. Louis for trans-shipment beyond by barge to points outside of Illinois about 1938, but such tonnage was small during that year, and gradually increased during 1939, 1940, and 1941.

This exhibit shows that the proportion of the total Indiana tonnage shipped by the Brazil-Clinton or alleged Indiana base group has steadily declined since 1923, while the proportion of the total Indiana tonnage shipped by the Princeton and Princeton-Boonville groups combined has steadily increased during the same period, so that the bulk of the total Indiana coal is now shipped from the Princeton-Boonville group.

The Brazil-Clinton group now ships no greater, if as great a proportion of the total Indiana tonnage as the Fulton-Peoria group ships of the total tonnage from all of the Illinois mines.

As shown by Witness May's testimony, the mines with the largest production in Indiana are located in the Prince-[fol. 2675] ton group and virtually all of the mines which were in the Boonville group prior to 1930 have been shifted to the Princeton group for rate purposes, that is, the rates from such mines have been placed on the Princeton group basis.

In view of all of these changes, it is our opinion that the few remaining mines in the Boonville group should be consolidated with those in the Princeton group and the rates from such consolidated group, which from the standpoint of production and shipments will be the largest in Indiana, should be measured by the average distance from all mines in such group.

(Exhibit No. 101, Witness Rozene, received in evidence.)

Q. Did you hear the proposal advanced by Mr. Scott on behalf of the Coal Trade Association of Indiana during his testimony that if the proposed increased rates from the Southern Illinois and other Illinois groups to the Northern Illinois points involved were approved, the rates from the Brazil-Clinton, Linton-Sullivan, Princeton, and Boonville

groups should be made 30 cents, 20 cents, 13 cents, and 10 cents per ton lower, respectively, than from the Southern Illinois group to such points, and if so, what if anything have you to say concerning such proposal?

A. I wish to first point out that as the present rates from the Indiana mines to the Northern Illinois points involved are on a lower level than the rates from the Illinois mines to [fol. 2676] such points, that his proposal would result in a further maladjustment in the rates from the mines in such states to such points. In addition, his proposal would result in increases of from 5 to 15 cents per ton in the present rates from the Illinois mines to the Northern Illinois points involved and in further reductions in most of the present low rates from the Indiana mines to such points.

Q. Have you prepared an exhibit showing the present and suspended rates from the Springfield, Southern Illinois, and Indiana groups to the representative suspended points, the rates proposed by Mr. Scott from such groups to such points, and the amount of increase or reduction that would result from the establishment of the suspended rates from the Illinois mines and those proposed by Mr. Scott from the Indiana mines?

A. Yes, I have prepared such exhibit and it has been marked Exhibit No. 102. This exhibit shows the average short tariff route mileages, the present and suspended rates, and the rates proposed by Mr. Scott from the Indiana groups and from the Springfield and Southern Illinois groups to the representative Northern Illinois points used in the railroads' exhibits in these proceedings.

It also shows the amount of increase proposed from such groups by the rates under suspension and the amount of increase which would result from Mr. Scott's proposal in the rates from the Springfield and Southern Illinois groups, and the amount of reduction which would result in the [fol. 2677] rates from all of the Indiana groups.

To Amboy, Illinois, for example, which is the first destination shown, increases of 5 cents per ton are proposed in the rates from the two Illinois and the four Indiana groups shown. Under Mr. Scott's proposal, however, the increase from the Illinois mines would be established, but the present rates from all of the Indiana groups, except the Evansville group, would be further reduced 9 cents per ton. Similar information is shown in this exhibit to the other 11 North-

ern Illinois points named. The increases which this exhibit shows would be made in the present rates from the Illinois mines, and the reductions which would be made in the present rates from the Indiana mines to the 12 representative Northern Illinois points shown are typical of the increases which would be made in the present rates from the Illinois mines and of the reductions which would be made in the present rates from the Indiana mines to numerous other important points throughout the Northern portion of Illinois.

(Exhibit No. 102, Witness Rozene, received in evidence.)

Q. During your previous testimony you were asked by Mr. Vesey and Mr. Biaett if you would prepare and submit an exhibit showing the gradation or progression of the Holmes and Hallowell scale in comparison with the gradation or progression of other scales, including the 23922 [fol. 2678] scale, which have been prescribed by the Interstate Commerce Commission. Have you prepared such an exhibit?

A. Yes, and it has been marked No. 103.

Q. Will you please explain what this exhibit shows?

A. Beyond a word or two concerning its construction, I believe that it is self-explanatory. The rates for the various scales shown are in cents per ton, except where otherwise indicated. I have shown the rate under each of the scales named for 50 miles, for 100 miles, and for other distances up to the end of such scales, in multiples of 50 miles each, or in 50 mile blocks.

It will be noted that the rate under the Holmes and Hallowell scale for 50 miles is $1.02 per ton and for 100 miles, $1.45 per ton. The progression or increase in such scale for 100 miles is therefore 43 cents per ton or 42 per cent over the scale rate for 50 miles. The progression at 150 miles is 80 cents per ton or 78 per cent over the scale rate for 50 miles. At 250 miles, the progression is $1.53 per ton or 150 per cent over the rate for the first 50 miles.

Contrasted with this, the Eastern Class rate scale, which was prescribed for application in Illinois, is 30 per cent higher for 100 miles than for 50 miles, 53 per cent higher for 150 miles than for 50 miles, and 90 per cent higher for 250 miles than for 50 miles.

[fols. 2679-2696]. As indicated on page 2 of this exhibit, the Holmes and Hallowell scale at 450 miles is $2.69 per

ton or 263 per cent higher than the rate under such scale for 50 miles, while under the Eastern Class rate scale the rate at 450 miles is 146 per cent higher than at 50 miles.

The general increases authorized by the Interstate Commerce Commission in Ex Parte No. 123 have not been added to the basic scales shown in this exhibit.

* * * * * * *

(Exhibit No. 103, Witness Rozene, received in evidence.)

[fol. 2697] By Mr. Stadell:

Q. Have you prepared an exhibit showing the weighted average producing, administrative and selling cost per ton for all of the mines in Illinois and for all of the mines in Indiana during the year 1936 and subsequent years or other periods?

A. Yes, I have prepared such an exhibit from the reports [fol. 2698] of the Bituminous Coal Division, Department of the Interior, and it has been marked Exhibit No. 106.

Q. Will you please explain what this exhibit shows?

A. Columns D, E, and F, on page 1 of this exhibit, show the total number of tons of coal produced by all mines of all types during the year 1936 and the other years or portions of years shown, in District No. 10, which is Illinois, and in District No. 11, which is Indiana, and the weighted average producing cost and the weighted average producing, administrative, and selling cost per ton for all of the mines in Illinois and all of the mines in Indiana.

Columns G, H, I and J, show the same information for all hand-loading mines, that is, mines which are not mechanized, in District No. 10, Illinois, and District No. 11, Indiana, for the same years or portions of years which are shown.

Columns D, E, F and G, on page 2, show the same information for all of the machine-loaded or mechanized mines in Illinois and in Indiana, and Columns H, I, J and K show the same information for all of the strip mines in Illinois and in Indiana for the year or portions of years shown.

From columns E and F on page 1, it will be found that the weighted average cost of production in Indiana for all types of mines during the first six months of 1942 was 16.16 cents per ton less than for the Illinois mines, and that

the weighted average producing, administrative, and selling cost per ton for the Indiana mines was 14.14 cents per [fol. 2699] ton lower than for the Illinois mines. The same character of comparison can be made for any of the other years or portions of years shown.

On page 227 of its report in Illinois Coal Traffic Bureau versus Ahnapee & Western Railway Company, 204 ICC 225, the Commission stated that many of the mines in Indiana could not use mining machines; that is, that they could not be mechanized.

Mr. Wilkinson: I move that be stricken. The report will speak for itself, Mr. Examiner. He is telling us what is stated in the report of the Interstate Commerce Commission. Is he trying to rebut that report or trying to rebut some evidence that Indiana or somebody else put in here?

Mr. Stadell: Just change that, Mr. Rozene, to read as follows—strike out that line, "On page 227," and the next line and the next line, and start on the following line and say, "This exhibit shows that during the first six months of 1942 but 3 per cent of the total production in Indiana was produced by hand-loading or non-mechanized mines, while during the same period 10½ per cent of the total production in Illinois was produced by hand-loaded mines."

The Witness: This exhibit shows that during the first six months of 1942 but 3 per cent of the total production in Indiana was produced by hand-loading or non-mechanized mines, while during the same period 10½ per cent of the total production in Illinois was produced by hand-loaded mines. In addition, 59 per cent of the total coal produced [fol. 2700] in Indiana in the first six months of 1942 was from strip mines.

[fol. 2701] (Exhibit No. 106, Witness Rozene, received in evidence.)

Mr. Wilkinson: Well, when I agree with you that the tonnage figures, these cost figures, and the hand-loading figures, I have seen reports in the Coal Division. The percentages are worked out by Mr. Stadell, I believe. I don't recall seeing those in the reports. Is that a correct statement, Mr. Stadell, that you supplied the percentages?

Mr. Stadell: As shown in this exhibit, you mean?

Mr. Wilkinson: Yes.

Mr. Kaylor: Well, he got that right off the exhibit, I presume, the same as the other.

Mr. Stadell: It is just a matter of computing here what percentage one figure is of another. It is shown on the face of the exhibit.

Exam. Trezise: We will accept your mathematics until they prove to be wrong.

[fols. 2702-2704] By Mr. Stadell:

Q. There has been considerable discussion in these proceedings by Mr. Scott and Mr. Christiansen with respect to the alleged differentials which were established by the so-called Blue Book Adjustment on July 19, 1925, and of the disruption of the differentials between the Southern Illinois and other Illinois groups, on the one hand, and the Indiana groups, for example, on the other, to the Northern Illinois points involved since that time. What, if anything, have you to say concerning that matter?

A. The differences between the present rates from the Southern Illinois group, on the one hand, for example, and the Indiana groups, on the other, or from the Southern Illinois group, on the one hand, and the Fulton-Peoria group on the other, to points in Northern Illinois or Southern Wisconsin, are not the same as were the differentials in effect between such groups to such points prior to July 19, 1925, when the so-called Blue Book Adjustment became effective, nor are they the same as were in effect prior to the general rate increases in 1920.

[fol. 2705] By Mr. Stadell:

Q. Have you prepared an exhibit showing the rates which were in effect prior to the general increases in Ex Parte No. 74 on August 25, 1920, and the rates which became effective by virtue of the so-called Blue Book Adjustment on July 19, 1925, from the Southern Illinois, Princeton-Ayrshire, Brazil-Clinton, and Linton-Sullivan, Indiana groups to the 12 representative suspended Northern Illinois points and the 14 representative comparative points, and the differences between the rates to such points from the Southern Illinois group, on the one hand, and such Indiana groups

on the other, on August 25, 1920, July 19, 1925, at the present time, and as proposed by the suspended rates?

A. Yes, I have prepared such an exhibit and it has been marked No. 107.

Q. Will you please explain what this exhibit shows?

A. In column B on page 1 of this exhibit, the names of the 12 representative suspended Northern Illinois points are shown. In columns C and D I have shown the rates in effect to such points from the Southern Illinois group on August 25, 1920, and July 19, 1925—August 25, 1920, being the day before the general percentage rate increases authorized in Ex Parte 74 became effective.

In columns E to J, inclusive, I have shown the same information with respect to the rates from the three Indiana [fol. 2706] groups named to such points. In columns K to N I have shown the amount by which the rates from the Southern Illinois and the Indiana groups on July 19, 1925, were increased over the rates in effect from such groups to the 12 points shown, on August 25, 1920.

Columns K to N, inclusive, show that the increases made on July 19, 1925, in the rates from the Southern Illinois group were in almost every case double, and in some cases almost triple the increases which were made in the rates from the three Indiana groups.

These substantially greater increases in the rates from the Southern Illinois group than from such Indiana groups, not only failed to restore the differentials which were in effect from such groups to such points on August 25, 1920, but substantially further disrupted and increased such differentials in favor of the Indiana groups and against the Southern Illinois group.

Page 2 of this exhibit shows the rates in effect from the Southern Illinois and Princeton groups on August 25, 1920, and July 19, 1925, and also the present and suspended rates from such groups to the 12 representative suspended Northern Illinois points and the 14 representative comparative points.

Columns K to R, inclusive, show the differences between the rates from the Southern Illinois group, on the one hand, and the Princeton-Ayrshire, Indiana group on the other, on

[fol. 2707] August 25, 1920, on July 19, 1925, at the present time, and under the suspended adjustment.

To Belvidere, Byron, Forreston, Geneva, Rochelle, and Sterling, for example, the rates from the Princeton-Ayrshire group on August 25, 1920, reflected differentials of 7 cents per ton over the rates from the Southern Illinois group, while under the so-called Blue Book Adjustment, these differentials instead of being restored were wholly disrupted and the rates from the Princeton-Ayrshire group were made 18 cents per ton lower than the rates from the Southern Illinois group to Belvidere, Byron, Forreston, and Geneva, and 13 cents per ton lower to Rochelle and Sterling.

Substantially the same is true with respect to the rates to most of the other points shown.

(Exhibit No. 107, Witness Rozene, received in evidence.)

Q. Have you analyzed Witness Scott's Exhibits Nos. 61, 62 and 71, in which he shows the average distances from origin points on the Chicago and Eastern Illinois and New York Central Railroad only, in the Southern Illinois and three of the Indiana groups to the Northern Illinois points, selected by him, and compares the present and suspended rates from such groups by use of certain scales and the ton-mile earnings and car-mile earnings for the average distances which he shows, and if so, what if anything have you to say concerning such exhibits?

[fol. 2708] A. These exhibits were undoubtedly prepared and presented on the assumption that the C. & E. I. and N. Y. C. Railroads were the only two railroads serving the Southern Illinois, Brazil-Clinton, Linton-Sullivan, and Princeton, Indiana groups, that such railroads also serve the destinations involved in these proceedings, and therefore control the rates from such groups to such points. This is not true, however. Neither the C. & E. I. nor the N. Y. C. serve any of the Northern Illinois destinations involved. Coal traffic originated by them in either the Indiana or Illinois groups named must be turned over to an intermediate or to the destination carriers that serve the points in Northern Illinois, such as the I. C. Railroad, C. & N. W. Railway, C. M. St. P. & P. Railroad, C. G. W. Railroad, and

so forth. Furthermore, the delivering carriers would be the same on both the Illinois and Indiana coal whether it originated on the C. & E. I., N. Y. C. or some of the other numerous railroads serving the Illinois and Indiana mines.

The C. & E. I. is of no importance so far as the coal tonnage from the Southern Illinois group is concerned, as it originated but 1.4 per cent of the total tonnage shipped from all mines on all railroads in that group to all destinations in 1941, as illustrative. The N. Y. C. serves but a few mines in the extreme Eastern portion of the Southern Illinois group, and a part of these mines is also served by the I. C. Railroad. The I. C. Railroad is the only railroad which serves some of the destination points involved, such [fol. 2709] as Rockford and Freeport, and also mines in both the Southern Illinois and Indiana groups, as it serves important mines in both the Linton-Sullivan and Southern Illinois groups. From the standpoint of total tonnage originated, it is the most important carrier from the Southern Illinois group, and Mr. Scott in his testimony stated that it was an important carrier in so far as the Linton-Sullivan group is concerned, and would be much more important in the future.

However, he has not shown the average mileage over the short tariff route of the Illinois Central from the origins on mines on its line in the Linton-Sullivan, Indiana and Southern Illinois groups to any of the Northern Illinois points shown in his Exhibits 61, 62, and 71. Had he done so and used such average mileages to compare the present and suspended rates from the Linton-Sullivan, Indiana group, on the one hand, and the Southern Illinois group on the other, his Exhibits Nos. 61, 62, and 71 would show that the present and suspended rates from the Southern Illinois group are on a substantially higher level than are the present or suspended rates from the Linton-Sullivan group.

His Exhibit 41 shows that the average short tariff route mileage from origins on the Illinois Central in the Linton-Sullivan group to Byron, Illinois, is 312.7 miles, and from origins on the I. C. in the Southern Illinois group as shown in Exhibit No. 42 is 326.5 miles. For these average distances the present rate of $1.95 from the Linton-Sullivan [fol. 2710] group to Byron is but 83.7 per cent of the

23922 scale, while the present rate from the Southern Illinois group is 87.1 per cent of that scale. For such average distances the suspended rate from the Linton-Sullivan group to Byron is 88 per cent and from the Southern Illinois group 91.3 per cent of the 23922 scale. Based on such average mileages, the present and suspended rates from the Linton-Sullivan group to Byron are 67.2 and 70.7 per cent respectively of the Midland scale, and the present and suspended rates from the Southern Illinois group to such point are 69.8 per cent and 73.1 per cent respectively of such scale.

To Dixon, Illinois, the short tariff route distance from origins or mines on the Illinois Central in the Linton-Sullivan group is 314 miles and from origins or mines on that road in the Southern Illinois group but 303.8 miles or approximately 10 miles less. Based on these average short tariff route distances, the present and suspended rates of $1.89 and $1.94 per ton respectively, from the Linton-Sullivan group to Dixon are 81.1 and 83.3 per cent, respectively, of the 23922 scale, while the present and suspended rates of $2.00 and $2.05 per ton respectively, from the Southern Illinois group to Dixon are 85.8 and 88 per cent, respectively, of that scale.

To Rockford, Illinois, the average short tariff route distance from all mines or origins in the Linton-Sullivan group on the Illinois Central Railroad is 352.7 miles and from all [fol. 2711] mines or origins on that road in the Southern Illinois group 329.2 miles or 23½ miles less. Based on these average short tariff route distances, the present and suspended rates of $1.90 and $2.05 per ton from the Linton-Sullivan group to Rockford are 76.3 and 82.3 per cent, respectively, of the 23922 scale, and 60.9 and 65.7 per cent, respectively, of the Midland scale, while the present and suspended rates of $2.10 and $2.25 per ton from the Southern Illinois group to Rockford are 87.1 and 93.4 per cent, respectively of the 23922 scale, and 69.8 and 74.8 per cent, respectively, of the Midland scale.

To Freeport, the average short tariff route distance from all mines or origins on the Illinois Central Railroad in the Linton-Sullivan group is 324.7 miles and from all mines or origins on that road in the Southern Illinois group, 339.4 miles. Based upon these average short tariff route mileages, the present and suspended rates of $1.90

and $2.05 per ton from the Linton-Sullivan group to Freeport are 81.5 and 88 per cent, respectively of the 23922 scale, and 65.5 and 70.7 per cent, respectively, of the Midland scale, while the present and suspended rates of $2.10 and $2.25, respectively, from the Southern Illinois group to Freeport are 87.1 and 93.4 per cent, respectively, of the 23922 scale and 69.8 and 74.8 per cent respectively, of the Midland scale.

When the average short tariff route mileage of the only carrier which serves both the Indiana and Southern Illinois [fol. 2712] mines and the destination territory involved and which controls the rates from such mines to such territory is used, the present and suspended rates from the Indiana mines to the Northern Illinois points involved are shown to be on a substantially lower level than are the present or suspended rates from the Southern Illinois mines. In most of the illustrations which I gave even the present rates from the Southern Illinois mines are on a higher level than are the proposed increased rates from the Linton-Sullivan, Indiana group, the present rate from the Southern Illinois mines to Rockford, for example, being 87.1 per cent of the 23922 scale and the suspended rate from the Linton-Sullivan group being but 82.3 per cent of that scale.

Q. What, if anything, have you to say concerning Witness Scott's Exhibit No. 63?

A. This exhibit purports to show the distances over the longest and shortest short tariff routes from any origin point, irrespective of whether there is a mine at such point, in the Springfield, Southern Illinois, Brazil-Clinton, Linton-Sullivan, Princeton, and Boonville groups to Beloit, Wisconsin, and the Northern Illinois points selected by Mr. Scott for use in his exhibits. This exhibit was apparently presented to create the impression that the Southern Illinois group covers a wide area and is much larger in size than any of the four Indiana groups named. This is not true. As stated by the Commission in Illinois-Indiana [fol. 2713] Coal Cases, 128 ICC 265, the Southern Illinois group is a small and compact group. It is but approximately 30 by 40 miles in area. It covers portions of Franklin, Williamson, and Saline counties.

The Brazil-Clinton group in Indiana covers portions of Parke, Vermillion, Vigo, and Clay counties. The Linton-

Sullivan, Indiana group covers portions of Vigo, Clay, Sullivan, Greene, and Knox counties, and the Princeton, Indiana group covers portions of Knox, Davies, Gibson, Pike, and Warrick counties.

The preponderance of the coal produced in the Southern Illinois group comes from mines in Franklin county alone. The difference in distance between the mines or origin points on the various railroads in the Southern Illinois group ranges from 11.6 miles on the C. & E. I. to 35.3 miles on the I. C. Railroad. The maximum difference in distance between the mines or origin points on the various railroads serving the Linton-Sullivan group ranges from 9 miles between those on the N. Y. C. to 36.7 miles between those on the C. M. St. P. & P. The maximum difference in distance between the mines or origin points on the various railroads in the Princeton-Ayrshire group ranges from 9.3 miles between those on the A. W. & W. to 40.1 miles between those on the N. Y. C. The maximum difference in distance between the mines or origin points on the various railroads in the Brazil-Clinton group ranges from 18.8 between those on the N. Y. C. to 20.2 between those on the C. M. St. P. & P. [fol. 2714] In his Exhibit No. 63, Mr. Scott has shown some of the long circuitous short tariff routes from origins in the Southern Illinois group to the destinations involved, which I pointed out in my previous testimony and in my Exhibit No. 30. To Freeport, Illinois, as illustrative, he shows the long circuitous short tariff route via the B. & O. Railroad from the tariff origin point of Junction, Illinois, on that road in that group.

He also shows the same long circuitous route via the B. & O. Railroad from the same tariff origin point of Junction to Ladd, Illinois.

To Wasco, Illinois, on page 3 of his Exhibit No. 63, is shown the long circuitous short tariff route from New Monarch mine in the Southern Illinois group via the C. B. & Q. Railroad. This mine was permanently closed down and abandoned in 1941 and will not be operated again.

To Dixon, he shows the shortest short tariff route from the tariff origin point of Green Valley in the Springfield, Illinois group on the C. & N. W. Railway. There is no mine at this tariff origin point, and the Coal Traffic representative of the C. & N. W. Railway has advised me that it has been or will be eliminated from the tariffs.

The same criticism may be directed generally to the rest of the routes shown in this exhibit. It shows nothing whatever with respect to the size of or area covered by the Southern Illinois group, nor does it show anything with respect to the average distances over the routes over which the [fol. 2715] coal from such group actually moves to the destinations involved in these cases.

In his rate and mileage exhibits, Mr. Scott has used as a representative Northern Illinois point, Ladd, Illinois, which was not used by any other party to these proceedings. The short tariff route from the Southern Illinois group to Ladd, used by Mr. Scott in his Exhibit No. 63, is so extremely circuitous that I have indicated it on a map, together with a reasonable and practicable short tariff route which could be established from the tariff origin point of Junction used by Mr. Scott in his Exhibit No. 63 in the Southern Illinois group to Ladd.

This exhibit, which is a map, has been marked No. 108. On this map I have shown, by means of the solid red line, the present circuitous short tariff route from the origin point of Junction, Illinois, in the Southern Illinois group, on the B. & O. Railroad to the destination named. I have also shown, by means of the red and blue line, the reasonable or practicable short tariff route from origins on that road in the Southern Illinois group to such point. The latter route is 133.5 miles shorter than the present circuitous short tariff route.

As I previously testified, there is no mine at Junction, Illinois, nor is there any mine on the B. & O. Railroad in the Southern Illinois group, except one exceedingly small one that shipped but 2,300 tons of coal in 1941, none of [fol. 2716] which was shipped to the destination territory involved here. The route of the B. & O. Railroad from origins on its line in that group to points in Northern Illinois should be eliminated entirely from the exhibits in these proceedings, on the theory used by Mr. Scott in omitting the average mileages and present and suspended rates from the entire Evansville and Bedford, Indiana groups from his exhibits.

(Exhibit No. 108, Witness Rozene, received in evidence)

Exam. Trezise: We will adjourn until tomorrow morning at ten o'clock.

(At 4:30 p. m., October 11th, 1943, the hearing was adjourned to 10:00 o'clock, a. m., October 12th, 1943.)

[fol. 2717]

Morrison Hotel,
Chicago, Illinois,
October 12, 1943.

The hearing was resumed pursuant to adjournment, at 10:00 o'clock, a. m.

Before: R. N. Trezise, Examiner.

W. C. Kaylor, Illinois Commerce Commission.

Appearances: As heretofore noted.

Proceedings

Exam. Trezise: Are you ready to proceed?

Mr. Stadell: We have six other exhibits, Mr. Examiner, that I would like to have distributed and marked off the record.

Exam. Trezise: The next number seems to be 109. Shall we proceed?

Mr. Zoll: Have they been numbered?

Mr. Stadell: Will you identify the six exhibits that have been distributed and mark them off the record.

(Discussion outside the record.)

(Exhibits 109 to 114, Witness Rozene, marked for identification.)

Mr. Stadell: On the record, Mr. Examiner, the exhibits that have been identified Exhibits 109 and 110 have the caption on their face "Middle States Fuels, Incorporated, versus The Atchison, Topeka and Santa Fe Railway Com-
[fol. 2718] pany, et al, ICC Docket No. 28888." They are the same exhibits that were introduced by Mr. Rozene in that proceeding, and I would like to have that caption changed in this proceeding to read "Bituminous Coal between points"—or I think it is points in Illinois, ICC Docket No. 28881, I. & S. Docket No. 5139 and Illinois Commerce Commission Docket, whatever that docket number is. Do you know what it is, Mr. Kaylor?

Mr. Christiansen: 30935.

Mr. Kaylor: And 31295. That is the Dixon docket.

Mr. Stadell: That is the Dixon docket.

HARRY A. ROZENE, resumed:

Direct examination (continued).

By Mr. Stadell:

Q. Mr. Rozene, will you please explain what your Exhibit No. 109 shows.

A. Exhibit 109 shows the distances via the shortest tariff routes from the Southern Illinois group to 45 destinations in the state of Wisconsin. Page 1 of the exhibit shows the tariff origin points located in the Southern Illinois group, and pages 3 to 10 show the distances via the shortest tariff routes——

Q. 2 to 10.

A. 2 to 10, inclusive, show the distances via the shortest tariff routes from the Southern Illinois group to the 45 [fol. 2719] destinations indicated.

Page 11 shows a recapitulation of the data shown in pages 2 to 10, inclusive. Pages 12 and 13 show the tariff routes. Page 14 shows the tariff authorities for the rates and mileages used.

Q. And also you have shown in this exhibit, on pages 2 to 10, the present rates on large and fine coal, where there are any rates on fine coal lower than those on large coal from the Southern Illinois group to each of the 45 points shown?

A. Yes, sir.

Q. Is that correct?

A. That is correct.

(Exhibit 109, Witness Rozene, received in evidence.)

Q. Will you please take up and explain what your Exhibit No. 110 shows.

A. Exhibit No. 110 shows the distances and rates via the shortest tariff routes from the Fulton-Peoria, Illinois group to the same 45 destinations in Wisconsin as shown in my preceding exhibit.

Page 1 shows the tariff origin points located in the Fulton-Peoria group. Pages 2 to 10 show the distances via the shortest tariff routes from the Fulton-Peoria group to the 45 destinations in Wisconsin.

Page 11 shows a recapitulation of the rates and distances [fol. 2720] as shown in pages 2 to 10, inclusive. Pages 12

and 13 show the routes. Page 14 shows the tariff authorities.

By Mr. Zoll:

Q. Mr. Rozene, these destinations in Wisconsin are destinations throughout the entire state?

A. Yes, sir.

Q. Aren't they?

A. Yes, sir.

Q. They are not any particular territory?

A. No; throughout the southern part of the state. That is from the middle of the state down.

Q. There are none above the middle of the state?

A. Well, there is a dividing line. We didn't go way up in the extreme northern part of Wisconsin.

By Mr. Stadell:

Q. Why didn't you go up there?

A. Well, there is no coal moving from Illinois up to that extreme northern part of Wisconsin; therefore we didn't compute any distances up to there.

Q. In other words, you in these two exhibits, 110 and 109, took representative points in the portion, the total portion of Wisconsin, to which coal from any of the Illinois mines moved?

A. Yes, sir.

By Mr. Zoll:

Q. These would be destinations both north and south of a line drawn east and west through Madison?

A. Yes, there are points north of that line and also a few points south.

[fol. 2721] Mr. Zoll: Thanks.

(Exhibit 110, Witness Rozene, received in evidence.)

By Mr. Stadell:

Q. Now, will you please explain what your Exhibit No. 111 shows.

A. Exhibit No. 111 shows——

Q. 111.

A. Or Exhibit 111 is a recapitulation of the rates and distances shown in the preceding exhibits, Nos. 109 and 110.

It shows the shortest tariff route mileage from the Fulton-Peoria and Southern Illinois groups and the rates, and also the amount that the rates from the shortest tariff routes are—distances are over the shortest tariff routes, Southern Illinois over Fulton-Peoria.

At the heading there it reads, "Recapitulation of rates and distances shown in preceding exhibits." Insert Nos. 109 and 110.

Q. And the same exhibit numbers should be filled in on the second page of Exhibit 111?

A. Yes, sir.

Q. Now, you have also shown on this exhibit the percentage that the present rates from the Fulton-Peoria and Southern Illinois groups to the 45 representative Wisconsin points are of the Midland scale?

A. Yes, sir.

[fol. 2722] (Exhibit 111, Witness Rozene, received in evidence.)

Q. Will you please take up and explain what your Exhibit 112 shows?

A. Exhibit 112 is a statement showing the distances via short-circuit routes to Beloit, Wisconsin, from tariff origin points located in the Southern Illinois group.

Q. Are you through with your explanation of Exhibit 112?

A. I believe it is self-explanatory, unless I should explain the method of figuring these distances. It is the method usually referred to as the method used in prescribing rates under the Class rate scales.

(Exhibit 112, Witness Rozene, received in evidence.)

Q. Will you please explain what your Exhibit No. 113 shows?

A. Exhibit No. 113 is similar to Exhibit No. 112 except that it shows the distances via the shortest circuit routes from the Fulton-Peoria group to Beloit, Wisconsin.

Q. You said "shortest circuit", you meant short-circuit?

A. Short-circuit, yes, sir. There is a line there, No. 35, "For tariff authorities for distances," insert Exhibit No. 27.

(Exhibit 113, Witness Rozene, received in evidence.)

Q. Will you now please explain what Exhibit No. 114 shows?

A. Exhibit No. 114 shows the number of origin points in each of the Illinois and Indiana groups, the total rates, [fol. 2723] the average rate from each group to the 13 representative suspended points as shown in Witness Scott's Exhibits numbered 41 and 42; also the grand total of such rates and the average rate applicable from all the Illinois origins on the one hand and all the Indiana origins named in such exhibits on the other.

Q. Did you say to what points?

A. To the 13 representative suspended—no, to the 13 destination points as used by Mr. Scott.

Q. In his exhibits?

A. In his Exhibits numbered 41 and 42.

Q. Are the average rates shown on your Exhibit No. 114 from the Indiana groups and from the Illinois groups as a whole different from those shown on Mr. Scott's Exhibits 41 and 42?

A. Yes, substantially different. As an illustration, Mr. Scott shows the average rate from the Illinois fields to Beloit, Wisconsin, as being $2.01——

Q. The Illinois field, you mean?

A. The Illinois field; to Beloit, Wisconsin, as being $2.01, while this exhibit shows the average rate should be $2.15.

Q. How do you account for that difference in the average rate of $2.01 per ton shown on his Exhibits Nos. 41 and 42, and of $2.15 per ton shown on your Exhibit No. 114?

A. Well, as I understand Mr. Scott's exhibit, he has taken the group rate, that is one rate from each group in the state of Illinois. As an illustration, he has used one [fol. 2724] rate from Southern Illinois and one rate from Springfield, and so forth, while this exhibit shows that there are 75 origin points in the Southern Illinois group and 63 origin points in the Springfield, Illinois, group, and so on down; and I have taken the total rate and divided it by the total number of origins.

(Exhibit 114, Witness Rozene, received in evidence.)

Q. Now, referring back a moment to your Exhibits Nos. 109, 110 and 111, in which you show the average distances over the shortest tariff routes from the Southern Illinois and Fulton-Peoria groups to 45 representative destinations

in Wisconsin, were those distances computed under the same method that was used by the parties for figuring average shortest tariff route distances in the Midland Electric Case?

A. Yes, sir.

Q. And that was the formula, or the mileages that were computed on that formula were the ones that were adopted by the Commission in that matter?

A. Yes, sir.

Q. You showed in some of your previous exhibits the number of tons of large coal and the number of tons of fine coal shipped from various origin groups to various destinations or destination territories. Would the heading of "Large coal" generally cover the coal that is used for domestic purposes, such as lump, egg, and nut [fol. 2725] sizes?

A. Yes, sir.

Q. And what would the designation of "fine coal" generally mean?

A. Well, it would generally mean that it was used for steam purposes.

Q. Industrial purposes?

A. Industrial purposes, yes. There might be a size or two that might be used, such as stove coal, that would come under the description of "fine coal."

Mr. Stadell: That is all. I just have one thing I would like to say off the record, Mr. Examiner.

Exam. Trezise: All right, off the record.

(Discussion outside the record.)

Exam. Trezise: Back on the record.

Mr. Stadell: Let me ask this. We would like permission to file——

By Mr. Stadell:

Q. How long will it take you to work that out?

A. It will take quite a while.

Q. Well, how long?

A. I couldn't say. There will be about 20,000 computations, and if we are just permitted to work on it steadily without doing anything else, we ought to be able to get it out in two weeks.

[fol. 2726] Q. Would the 15th——

Mr. Wilkinson: Two weeks is soon enough for me; three weeks, even, if you need the time.

Mr. Stadell: Make it 20 days.

Exam. Trezise: 20 days?

Mr. Stadell: Within 20 days after the closing of the hearing in these proceedings, we ask leave to furnish revised exhibits showing the average ton-mile earnings produced by the present and suspended rates from the mines in Illinois and Indiana to the 12 representative Northern Illinois points and the 14 representative comparative points and the percentages that such rates are of the Midland Electric and 23922 scales; and we will indicate on those exhibits which of Mr. Rozene's previous exhibits in these proceedings which they are revisions of.

Exam. Trezise: There seems to be no objection to that. That may be permitted.

(To be furnished, revised exhibits showing average ton-mile earnings produced by the present and suspended rates from mines in Illinois and Indiana to representative Northern Illinois and representative comparative points; Witness Rozene.)

Mr. Kaylor: You will likewise file three copies with the Illinois Commerce Commission?

Mr. Stadell: Yes, we will be glad to do that.

Mr. Kaylor: The Secretary's office in Springfield.

[fol. 2727] By Mr. Stadell:

Q. Do you have anything further on Mr. Scott's exhibits you want to say?

A. That is all I have.

Mr. Stadell: Cross examine.

Mr. Hunter: Mr. Examiner, I have a few questions.

Exam. Trezise: Mr. Hunter.

Cross-examination.

By Mr. Hunter:

Q. Mr. Rozene, refer, please, to the last three sentences on page 3 of your prepared statement, also the first two sentences on page 4, where you state that if Lincoln were

eliminated from the Springfield group, the northern boundary of the group would be moved a considerable distance south. Can you give us an idea of what you mean by that term "considerable distance"?

A. Yes. My map, Exhibit No. 20, shows the outline of the Springfield group, and as I stated in my testimony, that if Lincoln was eliminated, it would reduce the Springfield group and the boundary line of that group would be just north of the Wabash, running from Decatur to Springfield, Illinois.

Q. Now, if Lincoln alone were eliminated, it being comparatively nearer the Northern Illinois points, that would tend to increase the distance from the Springfield group, would it not?

A. Well, you are comparing one point with about 63. I don't think it would make a very materal difference in distance, on the average.

[fol. 2728] Q. Now, further on you state, on page 4, that if Edwardsville were eliminated, at the south end of the Springfield group, the southerly boundary of the Springfield group would be extended or moved approximately 17 miles north. That, of course, would tend to decrease the distances about 17 miles, wouldn't it, if that alone were involved?

A. It wouldn't decrease on the average 17 miles. Again, here, it probably wouldn't make any difference, because you are weighting one point against 63 points, and on the average I don't think it would make a material difference in the distances.

Q. Now, if Lincoln were eliminated at the north and Edwardsville were eliminated at the south, have you made any computation as to what the net result of those proposed changes would be?

A. No.

Q. Now, Mr. Rozene, referring to page 5 of your prepared statement, where you refer to the fact that if the Pennsylvania is not to be short-hauled on coal moving from its mines in Indiana, the Commission should take into consideration the distances from the Indiana mines on the Pennsylvania to Chicago rather than the mileages via the short or shortest tariff routes. Now, in connection with that, I would like to have you consider mileages from the Southern Illinois mines located on the Illinois Central,

for example; via the Illinois Central to Mendota and [fol. 2729] then the line of the Milwaukee to Rockford. The distance is 331.6 miles. If, however, we use the mileage via the Illinois Central all the way—and I take it you would have no objection to that, because the Illinois Central serves the origin and the destination groups—the distance from the Southern Illinois mines to Rockford would be 365.2 miles. Would you agree that, using your own language, that the Commission should use the Illinois Central mileage, which is 33.6 miles longer than through the route which has been used by the Illinois Central and the Milwaukee?

A. Well, if these lines or these routes from Indiana are to be used in constructing freight rates and comparing them with the mileage from the Illinois mines, in view of the fact that there is no coal moving over those routes, I would say the Commission could well consider the distance to Rockford as you have described it. You are just using like for like.

Q. In other words, you should use the same formula in figuring distances from Indiana as you do from Illinois, and if you use one formula from Indiana, there is no reason why that shouldn't be applied to all of the mileages more circuitous than the short tariff routes from the mines in Illinois?

A. And as I say, if you have a direct route, like has been described here from the Brazil-Clinton district to any of these points in Northern Illinois, and as the record shows there is no traffic moving over it, I say that that should not be considered.

[fol. 2730] Q. Did you give us the tariff authorities for your various circuitous mileages on pages 5, 6 and 7?

A. Yes, in my Exhibit No. 27.

Q. Exhibit No. 27?

A. That is correct.

Q. Now, refer to page 10 of your prepared statement, Mr. Rozene, where you referred to a difference of 81 miles between the average short tariff route distances from the Brazil-Clinton, Indiana group and the entire territory, including Northern Illinois, Wisconsin, Southeastern Minnesota and Eastern Iowa. Now, considering the issues involved in this case, don't you think it would be fairer if you had taken the difference of 104 miles between these

two groups which is shown on page 4 of your Exhibit 97?

A. Why, no. The Indiana producers suggested that we put all this in one territory, and I am showing what the difference would be in the entire territory. If you are going to group the entire territory, that is a difference you should consider.

Q. In making that answer, do you appreciate that the rates to those points are outside the scope of this complaint?

A. They are not involved in this complaint but they have been used here——

Q. Or in this proceeding?

A. They have been used here as establishing, setting up a [fol. 2731] territory to set a differential.

Q. Refer to page 20 of your prepared statement, Mr. Rozene, where you make an analysis or comparison of the Holmes and Hallowell case and the rates prescribed. I should like to ask a question there merely for the purpose of clarification.

As I understand it, there were two scales prescribed by the Commission in the Holmes and Hallowell cases. Will you please explain which of those two scales you refer to?

A. Basic.

Q. In what report? There were two reports.

A. Well, now——

By Mr. Stadell:

Q. Am I to understand, Mr. Rozene, that that is basic and not the maximum?

A. It is maximum. It is not the basic.

By Exam. Trezise:

Q. It is maximum?

A. It is maximum. The basic was prescribed in the first report, and then in the second report it was a maximum scale that was prescribed.

By Mr. Hunter:

Q. They used the maximum scale in the second report?

A. Yes, sir.

Mr. Hunter: That is all, thank you.

Mr. Christiansen: I have a couple of questions.
Exam. Trezise: Mr. Christiansen.

By Mr. Christiansen:

Q. Refer to your Exhibit No. 111, page 2, line 17, which [fol. 2732] shows the differential prescribed in the Midland Electric case, Southern Illinois over Fulton-Peoria to Southern Iowa of 50 cents. Do you know of any movement of coal to that particular territory where the 50 cent differential applies?

A. From Southern Illinois?

Q. No, from Fulton-Peoria.

A. No, sir, I do not.

Q. Assuming that there were 2,000 tons moved to that entire territory, would you say that that was a substantial movement out of four and a half million tons produced?

A. How many tons?

Q. 2,000.

A. No, that isn't substantial compared with four million.

Q. Now, on line 18 you show the differential to Western Iowa of 60 cents per ton.

A. Yes, sir.

Q. Southern Illinois over Fulton-Peoria district.

A. Yes, sir.

Q. Do you know of any movement of coal to that territory from Fulton-Peoria district?

A. No, sir.

Mr. Christiansen: That is all.
Exam. Trezise: Further questions?
Mr. Wilkinson: I have a few questions.
Exam. Trezise: Mr. Wilkinson.

[fol. 2733] By Mr. Wilkinson:

Q. Mr. Rozene, in your Exhibit 97 you stated that the distances were taken from the Carriers' Exhibits Nos. 3 and 4. Did you also use Exhibit No. 3-A?

A. That is the corrected—yes, we took the corrected figures. We attempted to. We corrected our original exhibit when 3-A was presented and made the changes.

Q. Well, I call your attention to the distance which you show in Column F on page 4 from Princeton-Ayrshire, Indiana, to Sterling of 396 miles, and ask you if it is not a fact that Exhibit No. 3-A shows that distance to be 371.8 miles.

A. I couldn't answer that. I would have to look at the exhibit.

Q. Now, under Boonville, you show 383 miles to Geneva, and will you check and see whether or not that distance in the carriers' exhibits is not 357.4 miles? Also on page 4 of your exhibit, Mr. Rozene, I believe you made a serious error in showing the difference of distance, either Evansville over Southern Illinois or Boonville over Southern Illinois, did you not? I mean Princeton-Ayrshire or Boonville.

A. What line are you referring to?

Q. Line 12, Sterling.

A. Well, it shows that this 396 miles is 55 miles greater than from Southern Illinois.

Q. Yes. How about Boonville?

A. There is an error there; that is obvious.

[fol. 2734] Q. You missed an opportunity to show that that was 90 miles greater than from Southern Illinois, didn't you?

A. It is an error.

Mr. Stadell: We will be glad to correct those. Mr. Rozene, check those and get the correct figures in the record, will you?

The Witness: Yes, sir.

By Mr. Wilkinson:

Q. Now, on the first three pages of your exhibit, are not the distances and differentials identical with the distances and differentials shown in Mr. Scott's Exhibit No. 49?

A. Yes. They are taken from the same report.

Q. Now, the difference on page 4 is that you have used the 12 representative destinations selected by the carriers instead of the destinations selected by Mr. Scott, is that not true?

A. Yes, sir.

Q. And you have added one thing. You have bunched the destinations in Wisconsin, Iowa and Southeastern Minnesota which are covered in the 204 ICC case with the 12 representative destinations in Northern Illinois, is that not a fact?

A. Yes, sir.

Q. And the result of grouping all four of those together is to somewhat reduce the differences in mileage as between Southern Illinois on the one hand and the Indiana groups on the other than the differences in mileage shown in the report in 204 ICC?

[fol. 2735] A. Well, by adding these 12 points makes a——

Q. I say that is the result?

A. Yes.

Q. Of bunching them together?

A. Yes.

Q. Is that the purpose of this exhibit, to show——

A. No. Pardon me.

Q. To show that by adding them all together, you would somewhat narrow the differences in distance between the Indiana groups and the Southern Illinois groups?

A. No, sir. This is offered in rebuttal to your statements that you should have the same differential to this territory as you have to the territory beyond, and we have simply shown what the result would be if the 12 destinations involved in this proceeding—what the result would be if it was included with the territory beyond.

Q. You think this should be, because of the fact that that is Northern Illinois destinations, for example, Princeton-Ayrshire on the average is a 7-mile shorter haul than Southern Illinois, whereas to the 70 destinations in Wisconsin, Iowa, and Minnesota, Princeton-Ayrshire is an average of 20 miles longer haul than Southern Illinois and has a 13 cent differential to those three points of Wisconsin, Iowa, and Minnesota, are you contending that because the difference in distance favors Princeton-Ayrshire in Northern Illinois, it should have a wider dif-

[fol. 2736] ferential?

A. No, that is one you are advocating.

Q. No, I am asking you if that is what you are intending to show by this exhibit?

A. I am showing you what the difference in distance would be if all of the territory was grouped as you suggested, just showing the result of what it would be.

Q. And that is the sole purpose of it?

Mr. Stadell: Now, I object to any such question as that, Mr. Examiner. The witness has stated very clearly on his direct examination what the purpose of it is. If Mr. Wilkinson wants to know the purpose of it, I will be glad to tell him what the purpose of it is.

Mr. Wilkinson: Will your answer stand for that of the witness, Mr. Stadell?

Exam. Trezise: Counsel may tell you what the purpose of any exhibit is.

Mr. Wilkinson: Oh, sure.

Exam. Trezise: If he desires.

Mr. Stadell: I don't know that we need disclose the purpose of it. The exhibit speaks for itself.

By Mr. Wilkinson:

Q. In your Exhibit No. 98, I understand that is merely to show rates to this territory that are lower than the rate from Southern Illinois of $2.10 for 369 miles?

A. It shows that.

[fol. 2737] Q. And that is all that it tends to show, as I gather?

A: Well, it shows that there are lower rates from Indiana points to destinations up here; take from Rockford—or Southern Illinois to Rockford.

Q. Can you tell me, Mr. Rozene, whether or not during 1936 the rates of the Milwaukee Railroad to Rockford, Freeport and other stations on its line intermediate to the Indiana mines, which were on the same level as the rates from Springfield, Illinois—that is the same level from Brazil-Clinton—were in effect?

A. The record shows that. It slips my mind just what the effective date of—the reduced rates from the Indiana mines, from the St. Paul Railroad mines?

Q. Yes, the ones that were reduced 17 cents a ton.

Mr. Stadell: I would be willing to concede, Mr. Rozene, that they were made effective sometime in 1934.

Mr. Wilkinson: Were they 1934?

Mr. Stadell: I think so.
The Witness: I have it here in my direct.

By Mr. Wilkinson:

Q. In your prepared statement, pages 3 and 4, where you discuss the effect on the Springfield group of omitting, Lincoln and omitting Edwardsville, you did not follow that theory of omission in the preparation of the various exhibits which you have filed in this case, have you?

A. No, sir. We were merely showing that if we left these [fol. 2738] points out, as Mr. Scott has done, such as the Bedford mines and the Evansville mines, that it would be proper to leave Lincoln out, where there is no production whatever.

Q. Now, isn't it a fact, Mr. Rozene, that in any of the groups there are origin points shown in the carriers' tariff which at the present time do not originate any coal traffic?

A. Yes, there are.

Q. Are you advocating that in these cases the parties use origin points and figure distance from origin points shown on the carriers' tariffs or that they must go out and find out whether or not coal is moving from each origin point that is used?

A. No, I think at the conference we had prior to these hearings it was decided to take the tariff origin points.

Q. I see.

A. And Mr. Scott hasn't done it, so he is using some other method than was agreed upon at that hearing, at that conference.

Q. Now, you discussed at some length the distances from the mines in the Brazil-Clinton and Indiana groups served by the Pennsylvania and what the mileage would be over certain routes of the Pennsylvania, hauling it to Chicago and delivering it to connections at Chicago. Did you use the routes via the Pennsylvania Railroad to Chicago and out to Rockford, Freeport and other destinations when you were figuring the distances from the Indiana groups, Brazil-Clinton and Linton-Sullivan to these destinations?

[fol. 2739] A. No, we used the short tariff route as shown in the tariffs, via Terre Haute or Beehunter.

Q. The same tariff routes that Mr. Scott used in his tariffs?

A. Yes, sir.

Q. So in that respect you are not criticizing the use of the short tariff routes?

A. Well, as I have stated before, why have a short tariff route in there, when it is stated that no traffic moved on it? Why, what is the purpose of the route, if it isn't for one thing, if it isn't for comparing the distances with Illinois? That is the way it looks to me. It is there for that one purpose and that one purpose only.

Q. Would you say that the route to which Mr. Hunter referred, via the Illinois Central to Mendota and then the Milwaukee to Rockford, as compared with the direct line of the Illinois Central, was put in in order that you might have a more favorable comparison of your distances from Southern Illinois?

Mr. Bather: Now, Mr. Examiner, I object to that question because there is a movement of coal via the Illinois Central, Mendota and the Milwaukee Road. I understood this witness to state there is no movement from Pennsylvania mines via Beehunter.

Exam. Trezise: I wondered where we were getting, anyhow, with these questions.

Mr. Wilkinson: I just want to find out the basis of that criticism. We are having our exhibits criticized and I am trying to find out the witness' theory of the [fol. 2740] criticism.

Mr. Stadell: He stated the basis of it in his direct testimony.

Mr. Wilkinson: I am trying to find out how far he wants to go with it.

Mr. Stadell: He stated it was merely an answer to Mr. Scott's testimony, that the shortest tariff route distances from Illinois or Southern Illinois didn't measure the regular transportation service, and he was showing that same thing was true with respect to the short tariff route distances from Indiana.

Mr. Wilkinson: I don't know whether my question was answered or just what the status of it is.

Exam. Trezise: The counsel, I thought you accepted his answer rather than the witness'.

Mr. Stadell: You asked what the purpose of the criticism was and I told you, Mr. Wilkinson.

Mr. Wilkinson: No, the question I asked was——

Exam. Trezise: You want the answer from the witness?

Mr. Wilkinson: Yes, I want the answer from the witness, if he thinks that same criticism—if he thinks that the rate or route published via the Illinois Central, Mendota and the Milwaukee to Rockford, which is some 40 or 37 miles shorter than the Illinois Central direct, was also published for the purpose of shortening the distance for comparative purposes in cases before the Commission, the [fol. 2741] same as he charged that these routes from Indiana——

The Witness: I don't know what purpose it was published for.

By Mr. Wilkinson:

Q. When you stated that the purpose of the publication of the routes from the Pennsylvania mines via Beehunter and Terre Haute and the Milwaukee beyond was to shorten the distance for comparative purposes from the Indiana groups, had you consulted with any of the officials of the Pennsylvania Railroad or the Milwaukee Railroad, upon which you based that statement?

A. No, I haven't consulted any of the officials of any railroads about these routes, but I know how those routes happened to come into that tariff, and that happened just before we tried the case in 25595. Those routings are established and they are published in a tariff in such a manner that the average rate man checking the tariff can't even find the route; and furthermore there were other routes published—I can refer to one of them in connection with the Monon. They give the Monon a 9-mile haul from their mines to Midland. However, since then that route has been cancelled; but it is my belief those routes were put in there for the express purpose of shortening the routes from Indiana.

Q. You are giving it now as an assumption or opinion rather than as any basic fact?

[fol. 2742] A. That is my opinion, yes, sir.

Exam. Trezise: Now, he said it was his belief before, and before that he said "it seems that way to me," as I recall it.

Mr. Wilkinson: As I recall it in his direct evidence he had stated that it was for that purpose. I can't carry all

those things in my mind, but that was the impression I had. I am trying to find out where he got his information. Now, I find out it is his opinion or assumption.

Exam. Trezise: That is right. It seemed that way to him.

By Mr. Wilkinson:

Q. Was the Illinois Coal Traffic Bureau in existence in 1923 and 1924, Mr. Rozene?

A. Yes, sir.

Q. Were you associated with it at that time?

A. Yes, sir.

Q. Do you know whether or not that Bureau, through its representatives, participated in the conferences and hearings surrounding the Blue Book publication that you referred to in your tariff?

A. I think Mr. Wildman attended the meetings down in Washington.

By Mr. Stadell:

Q. In 1923 and 1924?

The Witness: Wait a minute. The Blue Book, you are talking about?

By Mr. Wilkinson:

Q. Yes.

[fol. 2743] A. Well, I said Mr. Wildman. Probably Mr. Wildman wasn't with us at that time.

Q. Mr. Harwood?

Mr. Stadell: If you know it of your own knowledge. Don't be guessing at something, Mr. Rozene.

The Witness: I know from the file. I can't remember back whether Mr. Harwood or——

By Mr. Wilkinson:

Q. Somebody in your Association participated in the conferences that led to this Blue Book tariff publication and were a part and party to that proceeding, were they not?

A. As I say, I presume they did. I can only talk from the file. I don't remember just who went down there.

Q. Now, is it not a fact, Mr. Rozene, that to many points in this Northern Illinois territory, Southern Wisconsin, Iowa, prior to the July 15th and 19th, 1925, Blue Book publications, or rather prior to the increases and decreases that led to that publication, there were many points of destination at which the differentials as between Southern Illinois and Brazil-Clinton were 30 cents per ton?

A. I doubt it.

Q. You doubt it?

A. Yes.

Q. Were there some destinations?

A. There may have been a few but there w*asn't* many.

[fol. 2744] Q. There weren't many?

A. If any.

Q. Now, are you sure or are you just making a nice answer?

A. I can't state definitely.

Q. Then you don't know?

A. I don't know, that is right. Definitely, I don't.

Q. Did you bring with you the reports of the United States Department of the Interior, Bituminous Coal Division, from which the data shown on your Exhibit No. 106 was secured?

A. Yes, sir.

Q. May I see those?

A. Yes, sir.

Mr. Wilkinson: Off the record, Mr. Examiner.

Exam. Trezise: Off the record.

(Discussion outside the record.)

Mr. Wilkinson: Back on the record, Mr. Examiner. On the basis of the letter from Mr. George Lamb of the Statistical Bureau of the Bituminous Coal Division to Mr. Stadell, I move to strike the Exhibit No. 106 as not being information taken from a publication or public document promulgated by the Bituminous Coal Division of the Department of the Interior.

Mr. Stadell: As this letter states, Mr. Examiner, it says, "To the extent that these separations," namely, the separations with respect to the cost of the various types of mines, "To the extent that these separations were made in the [fol. 2745] statistical tables prepared by the Division," namely, the Bituminous Coal Division, "and used in ex-

hibits in public hearings or otherwise made available to the public, such information is shown in the attached tables." In other words, it was made available to the public either through exhibits or in some other way this information taken from the records of the Bituminous Coal Division is shown on these statements which were prepared by the Statistical Division or Section of the Bituminous Coal Division.

Exam. Trezise: The Examiners are inclined to believe that that is a public record. Whether they printed one copy of it or ten thousand wouldn't have anything to do with it. It is a public record, made available to the public, and it would be received—that wouldn't be objectionable, as I understand it.

Mr. Wilkinson: So I take it my motion is overruled?

Exam. Trezise: That is correct, Mr. Wilkinson.

By Mr. Wilkinson:

Q. You have emphasized, Mr. Rozene, the fact that there is not as much tonnage produced in the Brazil-Clinton, Indiana group today in recent years as there formerly was. Do you know whether or not a good many of the mines in the Brazil-Clinton group have been exhausted in the last—since 1923, when you start your figures?

A. Whether they have been exhausted?

Q. Yes, worked out.

[fol. 2746] A. No, I don't know.

Q. You don't know anything about that?

A. No.

Q. You just know the mines in one group produce more coal than mines in another group?

A. I know tonnages have been shifting to the south and I have heard Mr. Scott's predecessor testify to that many times.

Q. One of your exhibits that shows shipments 1923 down to date?

A. Shipments, yes, sir.

Q. Tends to show that?

A. They show the shipments, not the production.

Q. Well, your exhibits show all the shipments of coal made from these mines, do they not, Mr. Rozene?

A. They show all the coal reported by the railroads that was shipped, yes, sir.

Q. Doesn't that include everything except railroad fuel and truck shipments?

A. Truck shipments don't move over railroads.

Q. No, I say it shows all the coal except the railroad fuel and the coal that may have moved by truck?

A. Anything that was consumed at the mine, that didn't move out, surely.

Q. Do I understand from your statement on page 18, that where you stated, "In view of all of these changes, it is our opinion that the few remaining mines in the Boonville group should be consolidated with those in the [fol. 2747] Princeton group," that you are now advocating a consolidation of the Princeton, Indiana group and the Boonville group?

A. Yes, in view of the fact that every year or so there is a proposition on the Illinois Freight Committee dockets to move some mine from the Boonville district into the Princeton district, and we are continually watching that, and even as recently as three years ago there was a mine that was shifted from the Boonville group into the Princeton group, and that was the Tecumseh mine. That was originally placed in the Boonville group and then shifted over to the Princeton group, and if we are going to continue that, keep moving these mines over there, we say consolidate the two and eliminate that and make a basis of rates from the combined groups.

Q. Now, the Tecumseh mine was opened very shortly prior to the so-called shifting that you talk about, was it not? It had just come into operation, hadn't it?

A. Yes.

Q. When that occurred?

A. Yes.

Q. And it was served by two lines, wasn't it, the New York Central and the Southern?

A. I don't think it was served by the Southern.

Q. Now, isn't it a fact that back in 1930, the so-called shift that you talk about was the result of the New York Central Railroad publishing from the mines on its line [fol. 2748] which had previously taken the Boonville rates, the Princeton-Ayrshire rates? Wasn't that the shift that you talked about?

A. No, I didn't talk about that shift.

Q. The one in 1930?

A. I am talking about these continuous shifts that come up. For instance, there was a proposition not long ago of the Southern Railroad to put all the mines in the Boonville district into the Princeton district. Now, if they think that is all right, we say make a rate from all of the groups, the two combined groups, and eliminate the Boonville group entirely.

Q. Do I understand you to say that the Southern Railroad made such a proposition before the Coal and Coke Committee?

A. Yes, sir.

Q. That wasn't the position they took on the stand here, was it?

A. No, they didn't want any of their rates increased up here, as I recollect. And that proposition that we are speaking of, Boonville, of the Southern attempting or suggesting to put the Boonville basis of rates in or put the prescribed basis of rates in from Boonville was in Illinois Freight Association Docket No. CC 393-56, dated December, 1939, and May, 1940.

Q. And it wasn't done?

A. Nothing has come of it yet.

Q. You discussed yesterday, at pages 24 and 25 of your [fol. 2749] prepared statement, Mr. Scott's Exhibits 61, 62 and 71, which dealt with the mileages via the C. & E. I. and the New York Central from Indiana origins and from Southern Illinois. Now do you know whether or not the C. & E. I. and the New York Central serve Princeton and also—mines in the Princeton-Ayrshire district and mines in the Southern Illinois district?

A. Yes. The C. & E. I. serves one mine in the Princeton-Ayrshire district.

Q. And they are the only two carriers that serve mines in the Princeton-Ayrshire district and mines in the Southern Illinois district, aren't they?

A. Yes, I believe they are.

Q. And via the routes of those two carriers, via the routes published by each of those carriers, the short tariff routes published by each of those carriers, the distance from Princeton-Ayrshire to these destinations in Northern Illinois ranges around 30 to 35 miles less than the distance

from the mines served by them in Southern Illinois, is that not a fact?

A. I don't know. The exhibits will show that.

Q. Whatever the exhibits show, 41, 42, or 61, 62 and 71 show in that respect is correct?

A. *Are* correct?

Q. Yes, with respect to the New York Central and the C. & E. I.?

A. I don't know whether they are correct or not. I haven't checked the figures.

[fol. 2750] Q. Oh, you haven't checked them?

A. I haven't checked the figures, no.

Q. Now, on this Illinois Central, it serves Linton-Sullivan mines. It publishes two rates from its mines in the Linton-Sullivan district to Rockford and other points in Northern Illinois which it serves direct, does it not?

A. Two rates?

Q. Yes.

A. To what point?

Q. That is, for example, to Rockford. Is it not a fact that the Illinois Central publishes one rate of $1.90 to Rockford via its own line and another rate of $2.02 when the coal moves via the line of the Illinois Central and the C. M. St. P. & P.?

Mr. Kaylor: Do you mean from Southern Illinois?

Mr. Wilkinson: No, I mean from Linton-Sullivan.

The Witness: It publishes a rate of $1.90, the same as the St. Paul rate into Rockford.

Mr. Wilkinson: Yes; that is when it goes direct via the Illinois Central.

By Mr. Wilkinson:

Q. Now, what is the rate that it publishes in connection with the Milwaukee?

A. Well, it is something higher than that. I don't know just what it is.

Q. $2.02. I want to know, Mr. Rozene, what you consider the proper distance to use, or distances and rates to use in that situation on the Illinois Central to Rockford, [fol. 2751] for example, where, via its own line, with a longer haul than via the connection with the Milwaukee, it publishes a lower rate than it does via the Milwaukee con-

nection. In your exhibits have you shown both routes and rates, or if you haven't shown both, which have you used?

A. I have shown the lowest rate and the distance in connection with that rate over the route it applies. I have done that from Indiana and from Illinois alike.

Q. Is that the short or shortest tariff route from those mines on the Illinois Central?

A. I don't think it is.

Q. Do you know when the Illinois Central first published the rates from Linton-Sullivan to this territory, to destinations on its own line on the basis of $1.90 to Rockford and what we call the standard differentials under the Milwaukee rates?

A. No, I don't know the exact date that they published those.

Q. It has been rather recently, hasn't it?

A. I said I didn't know.

Q. Now, is it not a fact that in using, as you have done, on pages 25 and 26 of your prepared statement, the distances and rates from the Illinois Central mines in the Linton-Sullivan group for comparison with rates from Southern Illinois via the Illinois Central, that you have used the longest haul out of Linton-Sullivan and the lowest rate applicable from Linton-Sullivan, while from [fol. 2752] Southern Illinois you used the shortest haul and the rate which is uniform for all Southern Illinois points?

A. We used the same method you used in your exhibits. Now, whatever the result is, it shows.

Q. The result is as I have stated?

A. I don't think so. I would have to check into it. We have used the same identical method you used from Indiana.

By Mr. Stadell:

Q. You used it for the same purpose?

A. Same purpose, yes, sir.

By Mr. Wilkinson:

Q. But is the result as I have stated it? Have you checked enough to know that?

A. I have checked the mileage. I haven't checked to see whether it was the shortest in every case or not, or in any case. It is very easy to check that up.

Q. In your Exhibit No. 114, for example, you show rates to Beloit from the Illinois and Indiana groups, you show 75 origins in Southern Illinois and you show a total rate of 18,000. Now, isn't it a fact that to arrive at your total rate of 18,000, you merely multiply 240 by 75?

A. That is the only way you could.

Q. And the same is true with respect to your 63 Springfield rates, 13,230?

A. Yes.

Q. You have multiplied the $2.10 rate by the 63 origins? [fol. 2753] A. Well, you get the same result if you put 210 down 63 times and add them up.

Q. Yes. Now, as a matter of fact, you have a uniform rate from each of these groups to Beloit, except from Peoria, and there you have two rates, one of $1.94 and one of $1.80, isn't that correct?

A. Yes.

Q. Is not the situation with respect to those rates different than the situation with respect to mileages where, from each origin point, you have a different mileage to any destination?

A. No. There is no difference at all. You have got a rate from each one of those origin points. Because the rate happens to be the same from the 75 does not signify there is only one rate from the group. There is one rate from each one of those origin points the same as you the mileage.

Q. You have the same rate from each origin point, but you have a different mileage from each origin point?

A. That doesn't make any difference, if the rate is the same. You have still got a rate from each origin point.

Q. If you had added Column E for the Illinois origins and divided by the number of different rates that you had, would not your average have been $2.01?

A. Probably would.

Q. Now, you stated in your direct examination the effect your method of determining average rates from a state had on the Illinois rates. What, if any, effect would your [fol. 2754] method have on the Indiana rates?

The Witness: Read that.

Exam. Trezise: Read the question, please, Miss Reporter.

(Question read.)

By Mr. Wilkinson:

Q. As contrasted with the way Mr. Scott worked it out?

A. Well, I think Mr. Scott has worked his average rates just like I worked mine, that we are going to correct.

Mr. Stadell: Wait a minute, now.

The Witness: You want to know what effect——

Mr. Stadell: Wait a minute; you didn't state what you meant to state. Read that answer back. That is inconsistent with what you already testified to.

(Answer read.)

Mr. Stadell: That isn't right.

Mr. Wilkinson: Who is testifying?

The Witness: That I worked my average ton-mile earnings and relationships to the scales, instead of my rates.

Mr. Wilkinson: That is not my question.

By Mr. Wilkinson:

Q. What I am trying to get at, Mr. Rozene, is this: you show in your Exhibit No. 114 to Beloit the average rate from the Indiana groups to be $2.20. Now, isn't that the same average rate that Mr. Scott showed in his exhibit?

[fol. 2755] A. No, I think he showed $2.22.

Q. $2.22. Your method, as applied to the Indiana rates, did not increase the Indiana rates as much as applying your method to the Illinois rates shown by Mr. Scott?

A. No. In fact, it reduced them in some instances.

Mr. Wilkinson: That is all.

Exam. Trezise: I think we will take a brief recess at this time, gentlemen.

(Recess taken.)

Exam. Trezise: Any further questions?

Mr. Bather: I have a question to ask Mr. Rozene, Mr. Examiner.

Exam. Trezise: All right, Mr. Bather.

By Mr. Bather:

Q. Mr. Rozene, do you know of any movement of coal on the Illinois Central mines in the Linton-Sullivan district on the $2.02 rate?

A. No, sir, I do not.

Q. Do you know if there is any movement of coal by the Illinois Central direct on the $1.90 rate?

A. No, sir.

Mr. Bather: That is all.

Exam. Trezise: Do we have any further questions of Mr. Rozene? If not, you may be excused.

(Witness excused.)

Exam. Trezise: Do we have further testimony, before the [fol. 2756] carriers put in their rebuttal?

Mr. Stadell: I have a couple of questions that I would like to ask Mr. Wildman.

Mr. Wildman: I don't know whether I have been sworn in this proceeding or not.

Exam. Trezise: No, sir.

W. Y. Wildman was sworn and testified as follows:

Direct examination.

By Mr. Stadell:

Q. Will you please state your name, business address and occupation?

A. W. Y. Wildman, 307 North Michigan Avenue, Chicago, Illinois. I am associated with the Southern Illinois Coals, Incorporated.

Q. Could you briefly explain what the nature of the Southern Illinois Coals, Incorporated, is.

A. Well, Southern Illinois Coals, Incorporated, is a trade association, and prior to the expiration of the Bituminous Coal Act of 1937, acted as a marketing association. It still acts as an intermediary on sales of certain coals which it has sold for its producer member companies.

Prior to the expiration of the Bituminous Coal Act, I was chairman of the Marketing Division of the Southern

Illinois Coals, Incorporated, and have occupied that position, and with the expiration of the Coal Act the Marketing Division was abolished; so I can't say that I am chairman of the Marketing Division any more. I am associated with [fol. 2757] the organization and one of its attorneys and its employees.

Q. Approximately how long have you been associated with or employed by the coal industry in Illinois?

A. 20 years.

Q. Have you made an investigation, Mr. Wildman, from the records of the Southern Illinois Coals, Incorporated, and with the member companies of that organization, as well as other coal-producing companies in the Southern Illinois field, to determine how much coal, if any, has been shipped during the past several years via the Southern Illinois mines to cement plants located in the so-called LaSalle-Oglesby district in Illinois?

A. Yes, I have.

Q. What did your investigation disclose with respect to the tonnage shipped by those mines to those cement plants?

A. Well, many years ago we shipped a very substantial quantity of coal to the plants in the Illinois River Valley in the vicinity of LaSalle and Oglesby, but there is no Southern Illinois coal moving to such plants today. Our records indicate that it has been 1941 since we shipped coal into that area.

Q. And the cement plants in the LaSalle-Oglesby area that you refer to are those of the Alpha Portland Cement Company, the Marquette Cement Company and the Lehigh Cement Company?

A. Yes.

[fol. 2758] Q. Did you also ascertain how much, if any, tonnage has been shipped or is being shipped by the Southern Illinois mines to the cement plant of the Dewey Cement Company at Linwood, Iowa?

A. We did ship a considerable tonnage of coal to that mine but have made no shipments since 1940.

Q. And when that tonnage did move from the Southern Illinois mines to Linwood, could you tell us how it moved during the last few years it moved?

A. During the last few years it moved, it was moved by rail to Alton and thence by barge to the Linwood plant.

Q. Do you happen to know what the combination rail-barge charges were?

A. No, I don't recollect.

Q. Did you ascertain how much coal traffic, if any, the Southern Illinois mines shipped during 1941 and 1942 to the Medusa Portland Cement Company at Dixon, Illinois?

A. Yes, I made an investigation of that and also contacted another Southern Illinois company that is the only carbon producer in the field outside of Southern Illinois Coals, Incorporated; and added their tonnages to the tonnages of the members of Southern Illinois, Incorporated, and this investigation shows that in the calendar year of 1941 there was a movement of approximately 64,000 tons of Southern Illinois coal to the Medusa Portland Cement Company at Dixon, while in 1942 the tonnage shipped was approximately 33,000 tons.

[fol. 2759] I can't tell you the figures for 1943, but I do know that in 1941 and 1942 there were five companies in Southern Illinois shipping to this plant, and in 1943 there are only two companies shipping.

Q. You referred to the coal being shipped to that plant as "carbon." Could you briefly explain what you mean by that term?

A. Well, carbon is coal which would pass through a five-sixteenths inch screen. If I said it was all carbon I misspoke myself, because there is a considerable volume of dedusted screenings which moves to that plant in addition to the carbon.

Q. But the tonnage of the dedust would be included in the total tonnage that you gave?

A. That is right. I believe this plant probably uses more dedusted screenings than most cement plants; I mean in proportion to the carbon.

Q. Now, in one or more of the exhibits that has been presented in these proceedings, the tonnage shipped from the various Illinois groups to destinations in Wisconsin in the years 1941 and 1942 and preceding years *are* shown. Have you made any investigation to determine the distribution of that tonnage and what proportion of it was consigned to the public utility plants at Lakeside, Wisconsin, which is immediately outside Milwaukee?

A. Well, I can't say just what these exhibits have shown because I haven't seen the exhibits, but I do know that there is a very substantial movement of coal from Southern [fol. 2760] Illinois to the plant of the Wisconsin Electric Power Company at Lakeside, which is in the vicinity of Milwaukee, Wisconsin; and that volume will aggregate between seven and seven and a half million tons of coal——

Q. Thousand.

A. 700,000 and 750,000 tons of coal annually. Substantially all of that coal is this so-called carbon, very fine coal, five-sixteenths of an inch in size and smaller, which, of course, includes considerable dust, minus 10 and minus 48 mesh dust. It is sold at a cheap price, in fact it is the cheapest price of coal in Southern Illinois outside of dust, and I don't believe anybody in this room could carry a dime's worth of it on their back.

Q. The plant that you referred to at Lakeside is located in the Milwaukee switching district, isn't it?

A. I believe it is.

Mr. Stadell: That is all. Cross examine.

Exam. Trezise: Any questions?

Cross-examination.

By Mr. Christiansen:

Q. Mr. Wildman, you did ship some coal to Linwood, Iowa, the Dewey Portland Cement Company in 1941, did you not?

A. My record indicates that the last shipment was in September. There might have been some in 1941, small shipments.

[fol. 2761] Q. You did ship some, Mr. Wildman, to the LaSalle district in 1941, did you not?

A. Yes.

Mr. Christiansen: That is all.

The Witness: Not since 1941.

Mr. Stadell: Is that all the cross examination?

Exam. Trezise: Any further questions?

Mr. Wilkinson: Just one question.

Exam. Trezise: Mr. Wilkinson.

By Mr. Wilkinson:

Q. Does Southern Illinois supply the needs of the Lakeside plant, its total needs?

A. There is a small amount of coal moving in there from Indiana. They can't get all the coal they want from Southern Illinois. They would like to get it. They try to reduce the number of shippers they purchase from. There are only six Illinois shippers. They would like to get it all from one if they could get it, but we haven't got the coal in there and so they are taking about 100,000 tons of Indiana coal a year, maybe a little more than that.

Q. And that is the same kind of coal you ship, isn't it?

A. I don't know what kind they are shipping from Indiana.

Q. This carbon that you speak of, there is quite a substantial demand for carbon in certain types of plants, is there not, Mr. Wildman?

A. No, I would say to a limited number of users. I will say that the industrial plants which will use carbon [fol. 2762] wouldn't be five per cent of the industrial plants that would use screenings, a larger size; one to two inch screenings.

Q. The ones that use the carbon are mostly large plants, aren't they, with peculiar types of burning equipment?

A. Generally speaking the people that burn carbon are powder coal plants.

Q. And those are usually large plants?

A. That is correct.

Mr. Wilkinson: That is all.

Mr. Bather: I have a question.

By Mr. Bather:

Q. Mr. Wildman, there is a substantial movement of coal from Southern Illinois to Rockford and Freeport, is there not?

A. Yes, there is.

Q. Has that increased or decreased during the last three or four years?

A. Well, I haven't made a recent check of that, Mr. Bather, in the aggregate. I know that we have lost considerable business to Indiana over the last ten or fifteen years

in Rockford. Now, whether or not the aggregate shipments have increased or decreased, I really couldn't say.

Mr. Bather: That is all.

Exam. Trezise: If there are no further questions, you may be excused, Mr. Wildman.

[fol. 2763] The Witness: Thank you.

(Witness excused.)

Exam. Trezise: Do we have further testimony?

Mr. Christiansen: Mr. Examiner, before we start with the carriers' testimony, I would like to put in the tonnages that moved to the Southern Iowa destinations, which will only take about a minute.

Exam. Trezise: Very well, Mr. Christiansen.

A. J. CHRISTIANSEN (recalled):

Direct examination.

The Witness: My name is A. J. Christiansen. I am the same A. J. Christiansen that previously testified in this proceeding.

In the year 1941, the Fulton-Peoria district shipped 964 tons to Ottumwa, Iowa, and 1176 tons to Highland Park, Iowa, two destinations in the 50 cent territory; that is the 50 cent differential territory where Fulton county is 50 cents under Southern Illinois.

Those were the only shipments made to that territory in the year 1941. The shipments to Ottumwa, Iowa, were shipped to one of the Deere & Company plants on a contract covering the sale of coal to Deere & Company for their Moline, East Moline, Illinois, and Waterloo, Iowa, plants, and they took this tonnage at Ottumwa for their Ottumwa plant.

[fol. 2764] The tonnage that moved to Highland Park, Iowa, moved to the selling agent of Truax-Traer Coal Company. It was their own coal.

To the destinations in the 60 cent territory in Iowa, the total tonnage in the year 1941 was less than 1800 tons.

That is all.

Exam. Trezise: Any questions?

Mr. Stadell: I just want to ask you a couple of questions:

Cross-examination.

By Mr. Stadell:

Q. Did you say Island Park?
A. Highland.
Q. Highland Park?
A. That is Des Moines.
Q. That is Des Moines?
A. Yes, sir.
Q. And Ottumwa is located in the immediate vicinity of Des Moines?
A. No, Ottumwa is southeast of Des Moines.
Q. Both Ottumwa and Des Moines, however, are located in what is known as the Iowa coal field, aren't they?
A. That is true, yes.

Mr. Stadell: That is all.

Exam. Trezise: If there are no further questions, you may be excused.

(Witness excused.)

[fol. 2765] Exam. Trezise: If there is no further testimony before the carriers put on their rebuttal—off the record, please, Miss Reporter.

(Discussion outside the record.)

Exam. Trezise: We will adjourn until two o'clock.

(At 12:25 p. m. recess taken until 2:00 p. m.)

AFTERNOON SESSION

The hearing was resumed pursuant to recess.

2:00 P. M.

Exam. Trezise: All right, gentlemen, when you are ready we will begin.

Mr. Zoll: I call Mr. Hamilton.

B. M. Hamilton (recalled):

Direct examination.

By Mr. Zoll:

Q. You are the same Mr. Hamilton who has testified before in this case, are you not?
A. I am.

Q. And I believe you have a further statement as to your position. I would like to have you give it at this time.

A. When the suspended rates were published to comply with the order in ICC 25419, in which the rates from Illinois, Indiana and West Kentucky to Beloit were found not unreasonable but unduly prejudicial to Beloit, Wisconsin, and unduly preferential of Rockford, Illinois, to the [fol. 2766] extent that the rates to Beloit exceed by more than 15 cents per ton the contemporaneous rates to Rockford, it was not contemplated that there would be any particular disruption of the present differentials. However, the opposition to the suspended rates has given special attention to the question of differentials. Therefore, I feel compelled to state my position in regard to the relationship of rates from Southern Illinois versus Indiana.

For example, to Rockford, Illinois, the distance from the Springfield, Illinois, group is 108½ miles less than from Southern Illinois, and the difference in rate Springfield under Southern Illinois is 30 cents per ton. From the Brazil-Clinton, Indiana group to Rockford, the average distance is 116.2 miles less than from the Princeton, Indiana group and the difference in rate from Princeton over Brazil-Clinton from mines on the C. M. St. P. & P. by that line direct is 29 cents per ton, but for joint hauls in connection with the C. M. St. P. & P. and from mines on other origin lines, the difference in rate is 12 cents per ton.

To Rockford, Illinois, the distance from the Boonville, Indiana group is 154.4 miles greater than from the Brazil-Clinton, Indiana group, and the rates from the Boonville group are 32 cents per ton higher than the rates from the Brazil-Clinton, Indiana group by the C. M. St. P. & P. direct and 15 cents higher than the rates via other routes. [fol. 2767] Therefore it seems fair and proper in relating the Indiana and Illinois rates, to start on an equal basis and not use the most distant group, Southern Illinois, as the Illinois base group and the nearest group, Brazil-Clinton, as the base group in Indiana.

In other words, for example, to Rockford, Illinois, the Princeton-Ayrshire, Indiana group is practically the same distance as from Southern Illinois and the rates from the Princeton group should not be any lower than the rate

from Southern Illinois; and certainly rates from the Boonville group for a greater distance than from Southern Illinois should not be any lower than from Southern Illinois.

The average distance to the 12 representative suspended points is, from Southern Illinois, 361.9 miles; from Princeton-Ayrshire, Indiana group, 358.8 miles; from Boonville, Indiana group, 391.1 miles.

Q. Those mileages you have given are from the Carriers' Exhibits 3 and 4?

A. They are.

Q. Now, you say that you have been constrained to make that statement because of the fact that differentials have been injected into this case, and I will ask you the question; in view of that, whether you are supporting the suspended rates that the carriers have published?

A. Yes. I am supporting the suspended rates but if the Commission decides that the rates should be the same [fol. 2768] from all mines in the Brazil-Clinton, Indiana group via all routes and the same from all mines in the Linton-Sullivan, Indiana group via all routes and that the rates from the Princeton-Ayrshire group and from the Boonville, Indiana group should be made differentials under the Brazil-Clinton or Linton-Sullivan groups, this should not result in any reduction in the present or proposed rates from the Princeton-Ayrshire or Boonville, Indiana groups.

In other words, the present rate from the Princeton-Ayrshire group to Rockford, Illinois, for one mile greater distance is one cent less than the rate from Southern Illinois; and it would be unfair to the Illinois shippers and the railroads for the Commission, in approving the proposed rates from the Southern Illinois group, to base the rates from the Princeton-Ayrshire group 17 cents over the proposed rates applicable via the C. M. St. P. & P. from the Brazil, Indiana group, if that would result in rates from the Princeton-Ayrshire group 13 cents less than from Southern Illinois.

The present rate from the Boonville, Indiana group to Rockford, Illinois, for 39.5 miles greater distance is but two cents per ton higher than the rate from Southern Illinois. If the Commission approved the proposed rates from Southern Illinois and based the rates from the Boonville group 20 cents over the proposed rates applicable

via the C. M. St. P. & P. direct from the Brazil-Clinton, [fol. 2769] Indiana group, it would result in rates from the Boonville, Indiana group to Rockford, Illinois, 10 cents per ton less than the proposed rates from Southern Illinois, although the distance is 39.5 miles greater from the Boonville group than from Southern Illinois.

Mr. Zoll: That is all.
Exam. Trezise: Questions?
Mr. Wilkinson: Yes, sir.
Exam. Trezise: Mr. Wilkinson.

Cross-examination.

By Mr. Wilkinson:

Q. Mr. Hamilton, when you state that the suspended rates were published in line with the order in the most recent Beloit decision, you mean in the carrier's attempt to comply with that order by increasing the rates to Rockford rather than its alternative of decreasing the rates to Beloit?

A. That is right.

Q. Now, you have testified that, in your opinion, the former basis of publication of rates from Indiana on differentials over Brazil-Clinton should be terminated. Now, how are you proposing now to make the rates from Indiana, on differentials, over Boonville or under Southern Illinois or how? I didn't quite follow you on that.

A. I was proposing that because the distance from the Princeton group is practically the same as from Southern Illinois, that they ought to be on an equality; that those rates should not be lower than from Southern Illinois. [fol. 2770] Neither should Boonville.

Q. You don't think——

A. For considerably greater distance.

Q. You are not advocating that the rates from Brazil-Clinton be higher than from Springfield where they are substantially the same distance, are you?

A. Well, I think the distance warrants practically the same rates.

Q. Now, in your opinion does distance, should distance control or largely control this rate adjustment here?

A. Yes.

Q. If that is so, why does the Illinois Central Railroad publish a rate of $1.90 from its mines in the Linton-Sullivan group to Rockford, where the haul via your line direct is but slightly shorter than your haul from the Southern Illinois mines to Rockford?

A. The rates from the Brazil group to Rockford were published by the C. M. St. P. & P., and I guess you are all familiar with the circumstances of that publication, and we simply established the rates over the Illinois Central direct to meet the rates that were in effect via the C. M. St. P. & P.

Q. It was a competitive rate, then?

A. Yes, that is right.

By Mr. Zoll:

Q. The Milwaukee published not only from Brazil but [fol. 2771] from Linton, too.

A. I was speaking about Linton. We don't serve the Brazil group. He asked me about the Linton group; didn't you, Mr. Wilkinson?

Mr. Wilkinson: Yes.

[fol. 2772] By Mr. Wilkinson:

Q. And you found that if you were to participate in any traffic from the mines in Indiana that you served that you would have to get on to the same basis of rates with the Milwaukee mines in the Linton-Sullivan group, is that correct?

A. That is correct.

Q. And that was not affected by any competition from the mines which you serve in Southern Illinois?

A. I didn't quite get that.

Q. Well, you found that to move coal from Indiana, Linton-Sullivan group, you had to get your rates in line with the going rate from that group, the Milwaukee rate, if you were to move coal from that group, and that that was more important than having it in line with your Southern Illinois rate?

A. Well, I wouldn't express it that way, Mr. Wilkinson. The business that moved out of Indiana would move on the lower rate. If we wanted to handle any of it we had to have the rate, and it didn't affect Southern Illinois any

more to have the rate in via the Illinois Central as well a the Milwaukee than to have it via the Milwaukee alone.

Q. Now, you do not propose to change the present relationship as between the mines served by you in the Linton-Sullivan group and the mines served by you in Southern Illinois that exists today? That relationship is not changed under the suspended rates, is it, to Rockford and other points up there?

[fol. 2773] A. No, it is not.

Q. Nor is the relationship that exists today as between the mines on the Milwaukee Railroad in the Brazil-Clinton group and the Linton-Sullivan group to the destinations on its line changed under the suspended rate?

A. No.

Q. So that is it your opinion that if you changed the relationship of the rates from the other Indiana mines to those now existing from the Milwaukee mines and the Illinois Central mines, that there would be a trend of a change in the traffic from those other mines to this territory?

A. There might be, but if those rates are not on the proper basis, I don't think they should be continued indefinitely.

Q. Well, will it benefit, in your opinion, the carriers serving the mines in Princeton-Ayrshire and Boonville if the rates are placed on what you consider a proper relationship to Southern Illinois, if the effect thereof is to terminate the traffic from those mines to this territory?

A. Well, I don't know anything about terminating the traffic. As it stands today, the Princeton—the rates from the Princeton group to Rockford are 29 cents over the Brazil rates.

Q. On the Milwaukee?

A. On the Milwaukee. So if they were the same as Southern Illinois they would be 30 cents, and if they remained only 29 cents, it wouldn't change the situation at all as far as Princeton versus Brazil, Indiana, on the Mil-

[fol. 2774] waukee is concerned.

Q. So you don't think that the various changes which you are proposing would have any effect upon the movement of the traffic?

A. Well, I can't say that, whether they would have any effect or not.

Q. As a matter of fact, to many of these destinations you propose a widening of the differential as between Brazil-Clinton on the one hand and these Princeton-Ayrshire and Boonville groups on the other, do you not, over what exists today?

A. The basis that I have suggested would widen it, say, to Rockford, by one cent.

Q. Well, some of them are widened more than that, are they not, considerably more than that, 7, 9 cents?

A. I don't know what points you refer to.

Q. Have you found that since you put the rates from the Linton group to the same basis as the Milwaukee rates from that group that you are carrying more traffic to this territory than you did prior to the reduction in your rates?

A. No, I have not.

Q. It hasn't affected it?

A. Well, I haven't learned of any additional traffic that we are securing by it. There may be some but I haven't had any information about it.

Q. Does any coal move by your line direct from Linton [fol. 2775] Sullivan to any of these destinations?

A. You mean is there a movement there now.

Q. Yes.

A. I haven't the figures; I couldn't say.

Q. You don't know whether there is or is not a movement?

A. No.

Q. You don't know whether that reduction has been of any advantage to the Illinois Railroad or not?

A. Well, no, I can't say how much advantage it has been.

Q. Then why are you proposing to continue it?

A. As I stated before, it wasn't any effort on our part to change the situation down there when we had to comply with this order in the Beloit case. We simply proposed to make the same increase from all origin groups to Rockford so that the Beloit rates would not be reduced.

Q. Do I understand from that answer, Mr. Hamilton, that the sole basis for all of this proceeding is the desire of the carriers to prevent a reduction in the rates to Beloit?

A. No, not the sole basis. That is the reason for publication of the rates, and the testimony that has gone in here now, if the suggestions made by the Indiana and the Southern Indiana representatives should be followed, it

would mean a further reduction in the rates from Southern Indiana groups below the present basis as compared to Southern Illinois.

Q. Decrease the present basis to these particular towns [fol. 2776] that are under suspension here?

A. That is right.

Q. Not below the present basis that applies to all the rest of the surrounding territory?

Mr. Zoll: He said he was speaking of the suspended territory.

Mr. Wilkinson: That is all.

By Mr. Bather:

Q. So that, Mr. Hamilton, you could have complied with the order of the Commission by reducing the rate to Beloit 15 cents a ton, could you not?

A. Yes, we could, but we complied with the previous order in the Beloit case in reducing the rates to Beloit 50 cents a ton, and we couldn't see any good reason for a further reduction of 15 cents a ton.

Q. Would you say 50 cents a ton or 25 cents a ton?

A. 50 cents.

Q. So that in order to conserve the relatively small amount of revenue that you would have lost by reduction of the rate to Beloit, you elected to raise the rates to the heavier consuming points in Northern Illinois?

Mr. Zoll: I will object to that question. It is improper.

Mr. Bather: I don't see anything improper about it. I asked the question, he said that was the basis of the action taken by the carriers in publishing the rates.

[fol. 2777] Exam. Trezise: I think he can answer it, if he has an answer for it *if he has an answer for it.*

Mr. Zoll: All right. Bear in mind the implications, however.

The Witness: You say in order to——

Exam. Trezise: Do you want the question read?

The Witness: Yes, I wish you would. I kind of got off there.

Exam. Trezise: Then will you read the question, please, Miss Reporter?

(Question read.)

The Witness: I don't know what——

Exam. Trezise: Did you give him a foundation for that question?

Mr. Zoll: No, sir.

Exam. Trezise: For anything of that sort, that he implied in that question?

By Exam. Trezise:

Q. Would the amount be relatively small?

A. That was what I was going to say, about the relatively small amount. We felt, as we have testified here, that a further reduction to Beloit, Wisconsin, would inevitably result in demands for reductions to the surrounding territory or territory in Wisconsin, and therefore it would not be relatively small.

Q. All right, now, assuming it is not relatively small. Now, what is the rest of his question?

[fol. 2778] A. I thought I answered all of his question.

Mr. Bather: I think that answers my question, Mr. Examiner, in a general way.

Exam. Trezise: All right.

By Mr. Bather:

Q. Now, is it your opinion that a rate of $2.25 from Southern Illinois to Rockford is reasonable as compared with a rate of $2.15 from Southern Illinois to South Bend, Indiana?

Mr. Zoll: Mr. Examiner, I just want to remind everybody that this is rebuttal and all Mr. Hamilton did was state his position with respect to the differentials between the lower Indiana group. Now, of course——

Exam. Trezise: You are starting off on a new track.

Mr. Bather: I would rather withdraw the question, if it is not proper.

Exam. Trezise: Let's confine this examination to what he testified to in rebuttal. Otherwise, we never will get through, if we go over this ground over and over again.

Do you have some more questions, Mr. Bather?

Mr. Bather: No, I have no more; that is all.

Mr. Christiansen: I have a question.

Exam. Trezise: Mr. Christiansen.

By Mr. Christiansen:

Q. Mr. Hamilton, when you refer to the 50 cent a ton reduction in the first Beloit case from the Illinois and Indiana groups, you didn't mean to indicate that the 50 [fol. 2779] cent reduction had been made in the rate from the Fulton-Peoria District, did you?

A. I was referring to Southern Illinois. I had those figures in my mind when I said that. The rate was reduced from $2.75 to $2.25.

Q. And the Fulton-Peoria rate was reduced only 31 cents, isn't that right?

A. I haven't the figures before me on that.

Mr. Christiansen: Thank you.

Mr. Cardy: Just one question.

By Mr. Cardy:

Q. Mr. Hamilton, could you have complied with the order of the Commission by merely increasing the rate to Rockford without increasing it to all of these various points in Northern Illinois?

A. I don't see how it would be possible to do that, Mr. Cardy.

Q. That is based upon your construction of the order, I take it?

A. Well, the construction of the order is that the rates to Beloit should not be more than 15 cents over the rate to Rockford, but it would mean that an adjustment to Rockford would necessarily call for an adjustment to the intermediate and surrounding territory in Northern Illinois.

Q. Just one other question: There has been some question as to the number of rates or points of destination that were increased in this proceeding; in other words, anywhere from 50 to 350. To clear up the record, can you [fol. 2780] state approximately how many points in Northern Illinois are proposed to be increased?

A. Well, I haven't that figure before me but I believe Mr. Nelson has the figure and he is going to be on the stand later. I think he can tell you that.

Mr. Cardy: Thank you.

Exam. Trezise: Any further questions?

Mr. Stadell: I just have a couple of questions, Mr. Examiner.

Exam. Trezise: Mr. Stadell.

By Mr. Stadell:

Q. You stated in answer to a question by Mr. Wilkinson that establishment of the rates sought by the Indiana interests by the Southern Railway from the Princeton and Boonville mines to the Northern Illinois territory involved would result in further reductions in those rates as compared to the rates from Southern Illinois. Wouldn't it also result in further reductions in the rates from the Southern Indiana groups as compared to the rates, present rates from all of the other Illinois groups, Belleville, DuQuoin, Centralia and the balance of them?

A. Why, yes, it would mean the same relationship to the other groups that it bore to the Southern Illinois groups.

Q. Now, the Illinois Central serves other groups in Illinois besides the Southern Illinois group, does it not?

[fol. 2781] A. They do.

Q. What other groups?

A. They serve the DuQuoin, Belleville, Centralia, Springfield, Northern Illinois.

Q. And you serve a number of——

A. Peoria.

Q. And it also serves a number of destinations involved in Northern Illinois?

A. That is correct.

Q. Does the Illinois Central participate in the present rates, participate with the railroads, origin railroads serving the Princeton and Boonville, Indiana groups in the present rates from mines in those groups to points in Northern Illinois?

A. They do.

Q. And as I understand your position here, it is that the Illinois Central hopes to participate either as an intermediate or delivering carrier in these rates that have been suggested or requsted by the Southern Railway and the Indiana interests from the Princeton and Boonville groups to those destinations?

A. We object to the basis that has been proposed.

Q. You object to participating with those railroads in that basis, that reduced basis of rates?

A. Yes. We object to having that basis applied.

Q. Did you see the exhibits placed in the record by Mr. Rozene, showing the relative importance of the Princeton and Boonville, Indiana groups from the standpoint of tonnage shipped in comparison with the tonnage shipped from [fol. 2782] the other groups in Illinois and Indiana?

A. Yes, I did.

Q. You are familiar, are you, with the steps that have been taken since 1930 to place the mines that were formerly on the Princeton basis of rates on the Boonville basis?

Mr. Wilkinson: Now, I object to that. We were cautioned here a few moments ago to stick to Mr. Hamilton's direct examination.

Mr. Stadell: Well, that was a part of his direct examination.

Mr. Wilkinson: If we are going back over the whole thing again, then we will have to—I am afraid we will have to recross examine on Mr. Stadell's further direct.

Exam. Trezise: Can you read the question back there, please, Miss Reporter?

(Question read.)

Exam. Trezise: Yes, he talked about the relationship there between Boonville and the Princeton Ayrshire. What is the objection?

Mr. Wilkinson: Well, he didn't testify about any efforts to place Boonville on the Princeton basis or Princeton on the Boonville basis.

Mr. Stadell: All right, it is already in the record; I will withdraw the question, to prevent a lot of argument, to [fol. 2783] save time, Mr. Examiner.

Exam. Trezise: Do you have some more questions?

Mr. Stadell: I think it is clear enough in the record already.

Exam. Trezise: Do you have any more questions?

Mr. Stadell: Beg your pardon?

Exam. Trezise: Do you have any more questions?

Mr. Stadell: I just have—I think that is all.

Exam. Trezise: All right.

By Mr. Kaylor:

Q. Mr. Hamilton, you testified in answer to a question just a minute ago of Mr. Stadell that you knew of the movement. Did you or did the railroads, as far as you know, make an effort to determine the amount of increased revenue that was derived from basing the rates on carriers' proposal to Northern Illinois versus the Wisconsin points, or would there be an increase in rates?

Mr. Zoll: Mr. Examiner——

The Witness: Well, there is an exhibit in this case that shows an estimate of the loss the carriers would have.

Mr. Zoll: I believe that is Exhibit 5, if I recall, put in at the first hearing.

The Witness: If this basis is not approved.

Mr. Kaylor: It is in the record?

Mr. Zoll: Yes, sir.

The Witness: Yes, sir.

[fol. 2784] Mr. Zoll: It went in at the March hearing, as I remember.

Mr. Kaylor: All right.

By Exam. Trezise:

Q. Mr. Hamilton, what are the Commissions to assume from your answers about this terminating traffic? I don't understand what you meant by the answer that you gave. Do you think that the competitive situation is such between either the origin groups in Indiana, as has been testified to here, or the competitive situation between Indiana and the Illinois groups is so important as a principle that distance should be ignored to the extent that lower rates should apply for longer distances than for the shorter, average distances, I mean?

A. No, sir, I do not. Now, the only reference that was made to the lower rate for the longer distance by Mr. Wilkinson's question was on coal originating in the same district, where our route direct by the Illinois Central from the Linton group was longer than the route in connection with some other line.

Q. Well, if the principle that we have just gone over here is applied, if it terminates, if that principle results in terminating traffic, what do you think about terminating it?

A. Well, maybe I don't exactly get it, but if the distances between two groups, that one group is longer distant than the others, I don't think those rates should be made lower than the short distance.

Now, this other case was what happens from any origin [fol. 2785] group where one road is short and another road has a longer route.

Q. What significance did you undertake to apply to this term "differential"? You said that if one group is a base group here, you said similar principles should be applied, I imagined, in Illinois; I don't know just for sure what you meant. What do you mean by pointing out differentials and base groups? Does that mean that a rate goes up or down when you say the one word or say the other?

A. Oh, I wouldn't say that. I would say it is a question of the distance that should control, and I simply tried to show that the distance between Southern Illinois and Springfield was practically the same as it was between Princeton and Brazil and that there ought to be the same measure of rates between those groups.

Q. And if the average distance between one group be the same as from another, would you say that the rate to a given destination should be higher from the one than from the other because you called one a base group and the other a differential group, provided the transportation conditions are the same from both groups?

A. No, sir, I would not say that.

Exam. Trezise: Any further questions?

Mr. Zoll: Yes.

Redirect examination.

[fol. 2786] By Mr. Zoll:

Q. As I understood the Examiner's question, this was the problem that he posed: do you think that in the case of two origin groups equally distant from one destination, that the rates from one group should be lower than from the second group if making them the same would result in the one group losing business or being unable to ship to that destination?

A. Well, that wasn't involved in the Examiner's questions. He said nothing about the shipping. His was the

question about whether the rates should be lower for the same distance, and I said no.

Q. Well, do you want to answer my question?

A. Well, as far as your question is concerned, I couldn't tell whether it would change the movement or not.

Mr. Wilkinson: May I ask a question?

By Mr. Zoll:

Q. Your position is, as I understand, Mr. Hamilton, that both groups should be given reasonable and lawful rates, based on their distances and their transportation conditions? Now, if that result in one group shipping more coal than another, that is something that is outside the Commission's province to take care of in the prescription of rates?

Exam. Trezise: To help you, Mr. Zoll, I think Mr. Hamilton answered the Examiner's first question about this competitive principle, that distance shouldn't be sacrificed in a case of this kind; that the competitive situation wasn't so important, he said, that we should charge higher rates for [fol. 2787] shorter distances. I think that was his answer to my question; I don't know whether that is the same question you asked or not.

Mr. Zoll: If your question was answered, that was all I was interested in.

Mr. Wilkinson: Let me find out:

Recross-examination.

By Mr. Wilkinson:

Q. Mr. Hamilton, you told me a short time ago that you published rates from the mines served by you in Linton-Sullivan in order to be on a competitive parity with the mines served by the Milwaukee and with that line in hauling coal to Rockford, did you not?

A. Yes, from the same origin group.

Q. Yes. Now, will you tell me what difference exists in that competitive principle as between the Southern Railway serving the Sunlight mine in the Boonville district, making rates on which it may move some traffic in competition with Princeton or Southern Illinois? What is the dif-

ference in the transportation situation because you call the Sunlight mine a group or whether you call it a point in a group?

A. Well, the rates are published on a group basis, and if you are going to reduce the rates from one group to an equality with the rates from another group that is a shorter distance, I do not consider that to be proper.

Q. Now, using the same comparison that the Examiner has used, are you going to make and use a different prin-
[fol. 2788] ciple for the construction of rates because you designate one a group, any more than you designated one a base group, or are you going to make competitive rates from the points of origin you serve to the points of destination you serve?

A. I do not believe that the fact that you call one a base group and the other one not a base group should affect the measure of the rates.

Q. Well, should the measure of the rate be affected because you call one origin point a group instead of a point; point of origin?

By Exam. Trezise:

Q. Do you understand that?

A. Yes, I understand what he means. I know what he is driving at.

Exam. Trezise: All right.

Mr. Wilkinson: Do you, Mr. Examiner?

Exam. Trezise: I think you are talking about distance rates from all points.

Mr. Wilkinson: No, I am just talking about the same method of making rates.

Mr. Stadell: That is right.

The Witness: That was not because the Examiner said "distance," but then that was the answer I was going to give to you.

By Mr. Wilkinson:

Q. You think, then, that the——

[fol. 2789] A. The distance should govern.

Q. You think that the question of making comparative rates as you have done from your mines in the Linton

Sullivan district should go into the discard as soon as you put two mines together and call them a group?

A. Now, that is entirely——

Q. Is that what I am to understand from your answers to the Examiner's questions?

A. You are bringing another phase into this. As long as you are having groups, origin group rates, that is one thing. Now, if you are going to limit the rates in those groups to distance alone, then you have nothing left but a mileage basis, and I don't believe that any of the operators want a mileage basis of rates established.

Q. I might ask, has there been anything that Indiana has put in, the evidence Indiana has put in or any of the questions that I have asked that you have heard that indicated that Indiana interests wanted rates made on a mileage basis solely?

A. Nothing except this last question that would tend in that direction.

Q. On the principle of rate making?

A. Yes. Just this last question that you asked me is the only one.

Q. Let me see if I can phrase this so we will just get to one point, Mr. Hamilton. Do you think that because we have group rates that the matter of competition should [fol. 2790] not receive any consideration as between groups whereas within groups the competitive situation should be given consideration?

A. Well, I didn't make that statement. Of course——

Q. I am asking you if you think that.

Mr. Stadell: I think Mr. Wilkinson is confused in his question. He is confusing what a railroad might do itself in meeting competition and what the Commission should compel the railroads to do.

Mr. Wilkinson: I am not at all confused in my question, Mr. Stadell. I asked the witness an opinion as to two principles of rate making and his opinion. He has had long experience.

The Witness: I will have to have that question read.

Exam. Trezise: Read the question.

(Question read.)

The Witness: I don't think that a question of competition can be discarded entirely, but I do believe that where the distances are greater, that is the principal factor to be used in measuring the rates.

Exam. Trezise: Mr. Wilkinson, are you going to ask him--he doesn't believe in the mileage rates from a point. Now, the other question is——

Mr. Wilkinson: I will get to that in just one more question.

[fol. 2791] Exam. Trezise: All right, proceed.

By Mr. Wilkinson:

Q. Mr. Hamilton, you are and have been familiar with this rate adjustment in this territory for a great many years, have you not, this differential adjustment on coal?

A. For some time.

Q. Now, isn't it a fact that the differential as between two given groups is constant in this territory, Northern Illinois, Wisconsin, Iowa and all of it, irrespective of changes in the distances between the groups to a particular destination? That is a fact, isn't it?

A. Well, they are not constant, no. They are not constant to all points.

Q. And those variations in distance do not affect the differential adjustment? That is, if Springfield remains 30 cents over Southern Illinois, whether it is 106 miles shorter distance or 140 miles shorter distance to a given destination, isn't that true?

A. Well, I don't know about the distances that you refer to. The differences between the rates are not constant. They are not the same to all the territory.

Q. And that is largely because of competition as between the origin groups and the destinations and the carriers serving those groups, isn't that a fact?

A. Well, it is principally due to a difference in the mileage [fol. 2792] into the different destinations.

Q. Just what do you mean by that? A difference in the average mileage of all the carriers serving the group or what difference in mileage?

A. That is the way they are usually arrived at.

Q. Well, as a matter of fact, weren't these differentials arrived at many, many years ago between Springfield and Southern Illinois, for example?

A. Yes. They have been in effect for a long time.

Q. And don't you know, or do you know whether or not mileage had any great play in the determination of those differences?

A. I think it had a good deal to do with it.

Q. No matter whether there was 30, 40 or 50 miles' difference in the spread in the mileage between Springfield to one town and to another, the same 30 cent differential existed? Now, how much mileage has to come into play before you give it consideration?

A. I couldn't tell you.

Q. You don't know when to start on this giving mileage consideration?

A. When you started on this proposed reduction in the rates from the Southern Indiana groups, you disregard the mileage.

Q. Just when we started? I suppose you mean by that Indiana. Now, did Indiana start anything on this question of mileage until you reduced your rates from the Illinois origins to these destinations in [fol. 2793] 1930?

A. That isn't what I had in mind, Mr. Wilkinson. This is what I meant: that we proposed here to continue the same basis and make the same increase, but you are proposing that the rates from the Southern Indiana groups be reduced compared to the Illinois by adjusting the basis with relation — Princeton and Boonville to Brazil.

Q. Well, could you put it another way and say that Indiana is seeking a restoration of the old relationship by increasing the Illinois rates? That would bring about the same result, would it not?

Mr. Zoll: Aren't we getting a little bit off the track?

Mr. Stadell: Yes, we are not only doing that, Mr. Examiner, but we are arguing with the witness.

Mr. Wilkinson: My question started as a result of the Examiner's questions, I might say.

Mr. Stadell: Arguing with the witness here about restoration of differentials when the record shows it isn't a restoration at all.

Exam. Trezise: Well, what was the last question to which there was an objection?

(Question read.)

Mr. Wilkinson: You said we were seeking to reduce our rates from Indiana. I asked him if what we were seeking couldn't be accomplished the other way.

[fol. 2794] Exam. Trezise: Well, this question of differentials, he testified about that to some extent. I don't know how far he went.

Mr. Zoll: I will object to the question on the ground that counsel is asking my witness to construe counsel's position.

Mr. Wilkinson: No, he stated what we were trying to do.

Mr. Zoll: He shouldn't have done that.

Mr. Stadell: Your question is vague and indefinite and misleading, because it doesn't purport to indicate what differentials are to be restored. If the question refers to some alleged differentials existing in 1920 which the Commission told the railroads to restore, then it is asking for something entirely different than if it is referring to the differentials that the Indiana people have put in here as having been made effective July 19, 1925.

Exam. Trezise: If the witness understands it, he may answer it.

The Witness: I do not understand that. Your proposal here would not restore the basis in effect from the Southern Indiana groups but, in effect, would cause a new adjustment by reducing those rates as compared to Illinois.

By Mr. Wilkinson:

Q. Illinois present rates?

A. The proposed rates that are under suspension.

Q. Mr. Hamilton, is it not a fact that immediately prior to [fol. 2795] the reductions from Southern Illinois to Rockford, Freeport and Dixon, which occurred, I believe, in 1930, and for at least five years prior to that reduction, the rates from Boonville had been 10 cents under Southern Illinois to Rockford, Freeport and Dixon, and the rates

from Princeton-Ayrshire 10 cents—13 cents under Southern Illinois to Rockford, Freeport and Dixon?

A. Well, I haven't those figures in my mind.

Q. You don't remember them?

A. I know that Brazil was the same as Springfield and these other groups I believe were differentially related; however, the distance from Boonville is considerably greater than it is from Southern Illinois.

Q. Yes. Now, Mr. Hamilton, was not Boonville in the same place in 1925, 1926, 1927 and 1928 as it is today? They haven't moved Boonville, have they?

A. No.

Q. Isn't Southern Illinois in the same place today as it was in 1925 to 1930, inclusive?

A. Yes.

Q. Has there been any change in the location of Boonville, Princeton-Ayrshire and Southern Illinois that you know of in the last thirty years?

A. No change——

Q. Same geographical——

[fol. 2796] A. No change except possibly a little additional new mine or something like that, that would be all.

Q. Yes. And those differences in distance, with the fluctuation of a mile or two here and there on account of routing, have been there since those mines were opened and these railroads served them?

A. Well, I couldn't say the exact distance.

Q. I say with minor fluctuations. Isn't that true?

A. I presume so.

Q. So that we don't have, as far as distance is concerned, any different situation today than we have had for twenty-five, thirty years?

A. Not as far as distance; not as far as the approximate distance is concerned.

Q. And those approximate distances today, shown on this record, are substantially the same as they were in the record in Docket 25595, I. & S. Docket 4368, are they not, substantially the same?

A. I suppose so. I don't know what the figures were at the time those other cases were handled. However, it doesn't get away from the fact that you are proposing

lower rates for a longer distance from the Southern Indiana mines than apply from Illinois.

Mr. Wilkinson: All right, that is all.

Mr. Cardy: Just one question.

[fol. 2797] Exam. Trezise: Mr. Cardy.

By Mr. Cardy:

Q. Mr. Hamilton, if you increase the rates from the Southern Illinois district to Rockford 17 cents, which was the reduction referred by the Illinois Commerce Commission, and at the same time increased the rates from the Linton and Brazil-Clinton district via the Milwaukee and the Illinois Central, would not that restore the old relationship which existed many years prior to 1930 between Illinois and Indiana, all rates? Can you answer that yes or no?

A. I don't see how that could be done.

Q. Well, if it could be done it would restore the old differential basis which you know existed many years prior to 1930, isn't that true?

Mr. Stadell: The witness has already said it wouldn't.

By Mr. Cardy:

Q. You can say yes or no; you can answer that yes or no.

Mr. Zoll: I will object to that question on the ground that the witness has said the hypothesis is not true.

Mr. Cardy: Wait a minute. Is there any objection to that question, Mr. Zoll? Is there an objection to it?

Mr. Zoll: Yes.

Mr. Cardy: What is the objection? I have asked him to answer yes or no.

Mr. Zoll: You have asked him a question on a hypothesis which this witness says *it* is not true.

[fol. 2798] Mr. Cardy: I didn't understand that he said it wasn't true. He said it couldn't be done. We all know rates can be changed by the carriers. If he doesn't want to answer the question yes or no, I won't press it.

The Witness: Well, I will answer your question, the way the question was put, no.

By Mr. Cardy:

Q. And that is the reason that the carriers cannot or do not want to publish the basis of rates that went into effect prior to 1930, is that the reason?

A. I have explained fully the reason that we published these rates.

Mr. Cardy: All right, I won't press it. I think the record is clear.

Exam. Trezise: Do we have any further questions?

Mr. Stadell: I just want to ask a couple of questions of Mr. Hamilton.

Exam. Trezise: Mr. Stadell.

By Mr. Stadell:

Q. Mr. Wilkinson asked you, Mr. Hamilton, if the differentials between the Indiana groups on the one hand and the Illinois groups on the other weren't considered. What are the differentials between the Indiana groups, and take the Brazil-Clinton group as illustrative and the Southern Illinois group to Chicago, Chicago Switching District?

A. Well, I haven't the figures before me but the Brazil rates to Chicago were reduced in the ICC 16340.

[fol. 2799] Mr. Wilkinson: Off the record, I didn't ask him about Indiana.

Mr. Stadell: I understood you to ask him a question about the differentials being constant.

Mr. Wilkinson: No, I didn't. I didn't ask him about Indiana and Illinois.

By Mr. Stadell:

Q. Isn't the differential between the Southern Illinois group on the one hand and the Brazil-Clinton group on the other to Chicago 40 cents?

A. I believe so. My recollection is the rate was ordered in — $1.55 and it has since been increased 10 cents, which would make $1.65, and Southern Illinois is $2.05.

Q. Do you know what it is in Eastern Wisconsin?

A. No.

Q. You don't know, do you, whether the routes from the Boonville and Princeton groups from the Southern Illi-

nois groups to points in Northern Illinois today are the same as they were thirty years ago?

A. No, I couldn't tell you that.

Q. Or whether they are the same now as they were in 1925?

A. I couldn't say.

Q. Or whether the mileages are the same?

A. If the routes were not the same the mileages wouldn't be the same.

Mr. Stadell: That is all.

[fol. 2800] By Exam. Trezise:

Q. Back in 1925, you were in this sort of business then, weren't you, coal, figuring the rates and the distances?

A. Yes, I was in a coal office at that time.

Q. And when you compared those rates and distances back in 1925, you always compared the average or the short tariff routes from each point in the group just as you do now, or did you?

A. Yes, sir.

Q. Did you ever hear of distinguishing the difference between the short tariff route and the shortest tariff route until possibly the Midland case came up here a few years ago?

A. That is about the time that I first heard of it.

Q. Then back in 1925 you didn't make those distinctions that the Examiner mentioned here as between the average distances from these groups, did you? You figured the distances from Herrin, Illinois, and then you picked out some point, some place else, didn't you, to determine your distances?

A. Well, we figured the average from the group.

Q. You did figure the average from the group?

A. Yes, sir.

Q. But you didn't take the average of the short tariff route and compare it with the average of the short tariff route from another group, did you, and if you say yes I am going to ask you what case before the Interstate Commerce Commission that was in.

[fol. 2801] A. Well, I will see if I understand your question. Did we take the short tariff route——

Q. And compare it——

A. From one group?

Q. Yes.

A. The average short tariff route?

Q. Yes.

A. And compare it with the average short tariff route from another group?

Q. Yes, sir.

A. Well, I think——

Q. Back in 1925. Well, let's just drop that here; I am afraid I am taking up too much time.

Mr. Cardy: Just one question on that:

By Mr. Cardy:

Q. Mr. Hamilton, isn't it a fact that in the establishment of rates in Illinois, between Illinois and Indiana intrastate, that the average weighted haul was used first in the 5 per cent case and second in the 15 per cent case? Isn't that the mileage, the basis that was used in constructing these rates?

A. Not that I know of.

Mr. Cardy: All right.

Exam. Trezise: Do we have any further questions?

By Mr. Kaylor:

Q. Mr. Hamilton, you were with the Illinois Central at [fol. 2802] the time the Illinois Commerce Commission decided the Rockford-Freeport cases, were you not?

A. Yes, sir.

Q. And what position did the Illinois Central take in those cases with respect to appeals, if they did take any?

A. With respect to what?

Q. Appealing those cases.

A. Well, they joined the other carriers in the 13th Section——

Q. I mean before the Illinois courts.

A. I couldn't say. I never appeared before the Illinois Courts.

Q. Your method of seeking relief then was to file a 13th Section case with the Interstate Commerce Commission, is that what you meant by that answer?

A. Yes, that is what I said, that the Illinois Central joined the other railroads in a 13th Section petition.

Q. What caused the railroads to do that? Was it in their opinion a loss due to revenue?

A. Yes.

Q. Or to differentials?

A. It was revenue. There were some 28 cases about that time that were involved in that 13th Section petition.

Q. You didn't give consideration to the rates beyond Rockford-Freeport to the Wisconsin points, did you?

A. I don't know just what you mean by giving consideration to it. The rates from Illinois had been ordered [fol. 2803] reduced and causing a great loss in revenue, and we appealed to the Interstate Commerce Commission to bring the rates back to where they were before they were reduced.

By Mr. Bather:

Q. But prior to that, you took an appeal to the Circuit Court of LaGrange County, didn't you, against the order of the Illinois Commerce Commission?

Mr. Zoll: He said he didn't know.

The Witness: I didn't have anything to do with any court proceedings, so I am unable to answer that.

By Mr. Kaylor:

Q. What was the docket number of the case you mentioned a while ago?

A. 23130, if you are talking about the 13th Section case, ICC 23130. I don't know the Illinois number. There were a great many Illinois orders involved in that appeal.

Exam Trezise: Is that all?

Mr. Kaylor: Yes.

Exam. Trezise: If there are no further questions, you may be excused, Mr. Hamilton.

Mr. Zoll: That is five minutes on direct.

Exam. Trezise: We will take five minutes' recess, and let's try to get through, if we can.

(Recess taken.)

Exam. Trezise: Are you ready to proceed?

Mr. Hunter: May we mark these exhibits off the record? [fol. 2804] Exam. Trezise: Yes.

(Discussion outside the record.)

(Exhibits 115 and 116, Witness Kuhls, marked for identification.)

Mr. Hunter: We are recalling Mr. Walter H. Kuhls for rebuttal.

WALTER H. KUHLS recalled:

Direct examination.

By Mr. Hunter:

Q. Are you the same Mr. Walter H. Kuhls, the witness who testified in this proceedings heretofore?

A. Yes, I am.

Q. Mr. Kuhls, will you proceed with this exhibit marked 115 for identification and make whatever comment you think necessary.

A. That is a one-page statement showing the coal-producing companies and their production in 1925 and 1926 in Fulton County and Henry County. While the heading also refers to Will County and Knox County, it will be noted there were no operating rail mines in those two counties in 1925 and 1926.

This exhibit reflects the situation in the Fulton County group and in Will County at the time the carriers had before the Commission the so-called Blue Book Adjustment, and to bring about the effectiveness of that adjustment, they made some compromises in respect to the rates from the Fulton County group and from Will County. Those [fol. 2805] sacrifices were made because of the small production in these fields at the time.

(Exhibit 115, Witness Kuhls, received in evidence.)

In Exhibit 116 I have shown the major coal-producing companies in Will, Henry, Knox and Fulton Counties from 1924 through 1942. As the exhibit shows, several of the very large producing companies did not begin to operate in these counties until 1933, 1936, 1937 and even 1942.

To this exhibit should be added the Vulcan mine of the Midland Electric Coal Corporation, which opened in 1942, and according to Mr. Christiansen's testimony produced between 400,000 and 500,000 tons that year.

(Exhibit 116, Witness Kuhls, received in evidence.)

Q. Does that complete your explanation of those two exhibits?

A. It does.

Q. Mr. Kuhls, now, directing your attention to pages 3 and 4 of Mr. Rozene's statement on direct examination in which he discussed at considerable length what the Commission did in Docket 23130, have you any comments to make with respect to that testimony of Mr. Rozene?

A. His comments about what was before the Commission in this case, what the Commission did and what it said, leaves the impression that, in my mind, at least, that the Commission said that all the rates from Indiana were [fol. 2806] on a low level. That is not a fact, when the Commission's decision is examined; and it can be further shown that the Commission was laboring under a misapprehension as to the level of the rates when they referred to the rates they did refer to.

On page 549 of 182 ICC, the last paragraph on that page, the Commission said: "While it is evident that a number of the assailed rates from Illinois groups to Rockford, Freeport and Dixon are well below the reasonable level of rates in this territory, that appears to be true also of most of the rates from the Indiana groups to the same destinations. For example, the rate from the Brazil-Clinton group to Dixon is only 66.5 per cent of the Holmes and Hallowell scale, which is the same percentage of that scale as is reflected by the assailed rate from Southern Illinois to Dixon."

The percentage figure mentioned by the Commission in connection with the level of the Brazil-Clinton rate was based on an average distance from the entire Brazil-Clinton group of 260 miles, but the percentage of the rate reflected by the assailed rate from Southern Illinois was based on the short rate-making mileage from Southern Illinois to Dixon of 297.7 miles. Had the Commission compared like with like and used the short rate-making distance from Brazil-Clinton, the percentage of the Holmes

and Hallowell scale would have been 72 per cent instead of 66½ per cent, or 6 per cent higher than shown by them. [fol. 2807] Now, as to the next comparison the Commission makes from Brazil-Clinton to Freeport, 67 per cent of the scale as compared with 64 per cent from Southern Illinois to Freeport and 66 per cent from Southern Illinois to Rockford, the Commission again used the shortest rate-making line from Southern Illinois to Freeport and Rockford, whereas they used the average of the short tariff routes from all of the mines in the Brazil-Clinton group. Had they compared like with like they would have used a short-line distance of—no, they would have used an average of 289 miles from the Southern Illinois group, which would have made the—pardon me. They would have used——

By Mr. Stadell:

Q. Aren't all those mileages shown on the report, Mr. Kuhls?

A. Yes, they are all shown in the report.

Q. Can we put that in the brief?

A. No, this is testimony.

Mr. Stadell: It is all in the report. All you are doing is reading out of the Commission's report.

Mr. Hunter: He is refuting, Mr. Stadell, the argument that Mr. Rozene was permitted to put in his testimony.

Mr. Stadell: What I am getting at, all you are putting in the record here is what you are reading from the Commission's report in Docket 23130.

A. No, I am supplying the mileage figures so that the comparison between Southern Illinois and Brazil-Clinton [fol. 2808] group would be on a common basis.

By Mr. Stadell:

Q. Where are you getting the mileage figure, first, so we will be clear on that?

A. From the exhibits in the case.

Q. This case?

A. Oh, no; 23130.

By Exam. Trezise:

Q. Well, you have about completed your statement, haven't you?

A. Yes, just about. Instead of the Brazil-Clinton rate to Freeport being 67 per cent, it would have been 72 per cent.

Q. You said that once, didn't you?

A. No.

Q. Or is that something new?

A. No, this is to Freeport. I was talking about Dixon before.

Exam. Trezise: Oh, I see.

The Witness: And to Rockford, the Brazil-Clinton group rate would have been 77 per cent instead of 67 per cent. The figures that I gave, that is the mileage figures, were taken from Exhibit No. 335 in 23130 and reproduced in I. & S. 4833 as Exhibit 21.

By Mr. Stadell:

Q. Whose exhibit was that, do you know, Mr. Kuhls, offhand?

A. No, I do not.

Q. You don't know whether it was an exhibit presented by the Indiana operators in that case, that is the Exhibit [fol. 2809] 335 you referred to?

A. No, I think that was the Illinois exhibit. It shows the average from the Southern Illinois group, whereas the Commisison used the mileage via the short rate-making line.

By Mr. Hunter:

Q. Mr. Kuhls, referring now to page 30 of Mr. Rozene's prepared statement on direct examination, where he commented about what he termed the further reductions of the Milwaukee Railroad in rates from its Indiana mines, have you any comments with respect to that?

A. Well, he charges here that the Milwaukee Railroad is attempting to further reduce the rates from Indiana. He made the same charge yesterday on his redirect.

Now, that charge can't be substantiated by the record in this case. There are 173 destinations involved in these proceedings. The mines on the Milwaukee Railroad in

the Brazil-Clinton and Linton-Sullivan district and, in fact, all the mines in that district, are not getting a single reduction to these 173 destinations. On the other hand, Southern Illinois is getting reductions to 36 destinations. Southern Illinois is getting increases to 78 destinations, whereas the mines on the Milwaukee Railroad and all mines in the Brazil-Clinton, Linton-Sullivan groups are getting increases to 96 destinations.

Q. Now, Mr. Kuhls, will you refer to Exhibits 35 and 38 prepared by Witness Rozene. Have you any comments with respect to those exhibits?

[fol. 2810] A. In Exhibits 35 to 38, inclusive, Mr. Rozene shows the shortest tariff route distances from all shipping points named in tariffs at Lake Superior. He shows the Holmes and Hallowell scale rates, the percentage of the Holmes and Hallowell scale rates and also the percentage of the 26558 scale rates to a number of destinations in Southeastern Minnesota and in Northwestern Iowa.

The situation depicted by Mr. Rozene's exhibits exists only to this small territory which Mr. Rozene had to pick out in order to make the showing. If he had used the entire Holmes and Hallowell scale territory, an entirely different picture would be presented. All of the destinations used by Mr. Rozene are located south of the line of the Milwaukee Railroad from Minneapolis to Aberdeen, South Dakota. Now, that territory is the territory to which rates were reduced from Lake Superior docks to meet rates published from Illinois, and it is also the territory in which natural gas competition exists and the mines serving Lake Superior docks have reduced rates to meet gas competition, the same as have the lines serving Illinois and Indiana.

As a matter of fact, even remaining within the territory that Mr. Rozene picked out, it will be found that a number of the rates within that same territory are on basis of the full Holmes and Hallowell scale from Duluth, such as Sioux Falls, Watertown, Yankton, Viborg and Huron.

[fol. 2811] When you go into the territory north of that picked by Mr. Rozene, where your direct east and west lines operate, with few exceptions all the rates are on basis of the full Holmes and Hallowell scale. The exception is at Fargo, North Dakota, and intermediate points where such rates were published to meet or forestall natural

gas competition and to meet lignite competition from North Dakota mines moving into Fargo by truck.

I have made a study of the territory north of the line of the Milwaukee from Minneapolis to Aberdeen, taking 19 representative points, and I find that with four exceptions the rates on large coal—as a matter of fact, the same rate applies on large coal and fine coal—the rates are on basis of the full Holmes and Hallowell scale, and including the excepted points, the rates are on basis of 102.1 per cent of the 26558 scale. So, generally speaking, the rates within the Holmes and Hallowell territory are not lower, generally, than the full Holmes and Hallowell scale, using the mileage from Duluth as the Commission used in 69 ICC 11.

Duluth and Superior combined handle between 6,000,000 and 9,000,000 tons of coal annually, and all the other dock ports used by Mr. Rozene, including Ashland, handle less than 1,000,000 tons. Duluth and Superior have about an equal dock capacity but the bulk of the coal from Superior moves to Wisconsin destinations on the Wis-
[fol. 2812] consin intrastate rate level, whereas the great bulk of the Duluth tonnage moves west to Minnesota and North and South Dakota. Therefore, in my opinion, it is proper to use the mileages from Duluth in measuring the rates to Minnesota and the Dakotas, also Northern Iowa. And on that basis it cannot be said that the rates as a general thing are lower than the full Holmes and Hallowell scale.

Q. Does that complete your comment on Mr. Rozene's testimony?

A. Yes, it does.

Q. I would like to direct your attention, then, to a request of Mr. Stadell that you furnish the names of the mines and the operating companies in the so-called Bedford district. I think there were a few mines there that took a rate of 7 cents over Linton. Did you endeavor to develop that information?

A. Yes, and I find that there are no mines operating at those several origins in the vicinity of Bedford, and there has been no coal shipped therefrom in the past three years; and as stated previously in the record, instructions have been given to our tariff department to cancel the origin

points from the tariff naming rates to Chicago and the Northwest.

Q. Have you anything further?

A. I would like to call attention to a matter in Exhibit No. 4, Section I, page 9, which is a rate history to Rockford, Illinois. Line 12 shows that the rate from Atkinson to Rockford was reduced 14 cents a ton, from 154 to 140, and I wish to state that the 140 rate was published by [fol. 2813] the Milwaukee Railroad in error and no change was made in the rate from Atkinson to Rockford in connection with the C&NW Railroad as destination line. That error is carried through to the end of the history and where the Atkinson rate appears as $1.70 under suspension, the rate, had not that error been made, would be $1.84, and it would be our purpose to restore the Atkinson rate to its proper basis by increasing it 14 cents a ton.

Q. What do you mean by that term "proper," Mr. Kuhls?

A. Well, I think that when you change a rate by mistake, just an error on the part of the tariff compiler, that it is not a proper rate.

Q. Even though it may have been in effect for some years?

A. Well, when he made the mistake it wasn't in effect at all, of course, until after he made it.

Q. Have you anything further?

A. Yes, I have some correlative remarks to make in connection with that, if I can find the page I want.

As confirmation for the statements I just made, if you will refer to Section IV of Exhibit 4, page 3, you will find that the present rate from Atkinson to Beloit appears as $1.94, being based 15 cents per ton over the present basis at Rockford of $1.79. Actually, however, the Milwaukee Railroad, in complying with the order in the Beloit case, had to make Beloit 15 cents over Rockford and there- [fol. 2814] fore reduced the rate from $1.94 to $1.80, inasmuch as the suspended rate to Rockford is $1.65; and that is the only reduction that is proposed in this entire adjustment, namely, rate from Atkinson to Beloit of $1.80 by reason of the erroneous publication from Atkinson to Rockford.

Mr. Hunter: You may cross examine.

Exam. Trezise: Now, let's see, before we ask questions.

By Exam. Trezise:

Q. It is your understanding, is it, that Mr. Rozene made some contention that the rates from the Head of the Lakes to this Holmes and Hallowell territory are generally lower than the full H. & H. scale. You intimated——

A. Yes, he made that contention.

Q.——that you thought he had made that contention.

A. Based on the rates to a particular part of the territory which he had to pick out to make that showing.

Exam. Trezise: Go ahead.

Cross examination.

By Mr. Christiansen:

Q. Mr. Kuhls, therefore the rate at least from Atkinson to Beloit was involved in I. & S. 1539, isn't it?

A. It is.

Q. And Beloit, therefore, is an affected point from Illinois origin groups as well as—instead of the compared point, isn't that right?

[fol. 2815] A. In so far as Atkinson is concerned.

Q. And when you change the rate from Atkinson you change the differential relationship from all other origin groups in Illinois by narrowing it 14 cents a ton, do you not?

A. Well, the effect was to change the differential or differences, as they might be termed.

Q. Do you consider this $1.94 rate from Atkinson to Beloit, Wisconsin, for a distance of 133 miles, a reasonable rate?

A. I don't think it is unreasonable.

Q. Do you consider the suggested rate which you just mentioned as $1.84 from Atkinson to Rockford for 115 miles as a reasonable rate?

A. Well, I do. Otherwise we wouldn't have proposed it.

Q. How much transportation do you propose to furnish to the Indiana producers from the Brazil-Clinton group to Rockford, Illinois, for $1.95 in distance? Isn't it a fact that your distance from the Milwaukee origin groups in the Brazil-Clinton group is 237 miles?

A. I believe that is the figure, yes.

Q. And you propose to furnish 237 miles of transportation for $1.95, or 1 cent higher than you suggest as a rea-

sonable rate from Atkinson to Rockford for 115 miles, or one hundred and some twenty-two miles less?

A. Well, that is what the proposal would result in, yes.

Q. And you consider that a reasonable proposal?

[fol. 2816] A. Well, I suppose you could single out certain rates, but in the aggregate this proposal contemplates increases in all rates 15 cents a ton to avoid further reduction in the rates to Beloit.

Q. Do you know of any transportation conditions that apply from Atkinson that are different from the transportation conditions that apply from Indiana groups that would justify such a difference in level of rates?

A. No, sir.

Q. Now, referring to your Exhibit No. 115, you show certain counties in the Fulton-Peoria and Northern Illinois producing district. There was a production of coal in other counties in the Northern Illinois district in 1925 and 1926, was there not? I refer you to LaSalle County——

A. Oh, yes.

Q. And other counties.

A. Oh, yes, quite a production.

Q. And at the time of the readjustment in I. & S. 2346, there was pending a complaint filed by the Northern Illinois producers to certain Wisconsin destinations, which was settled with I. & S. 2346, wasn't it?

A. I wasn't handling commerce work at that time and I have no knowledge of it.

Q. You didn't know about that?

A. No, sir.

[fol. 2817] Mr. Christiansen: I think that is all.

Exam. Trezise: Any further questions?

By Mr. Bather:

Q. Mr. Kuhls, in other words, as I get your testimony, you propose to increase all of the rates regardless of the origins to Rockford and this affected territory 15 cents per ton without regard to the reasonableness of any particular rate?

A. Yes, that is our proposal.

Mr. Bather: That is all.

Exam. Trezise: If there are no further questions——

Mr. Stadell: I have some questions here, Mr. Examiner.
Exam. Trezise: All right.

By Mr. Stadell:

Q. You refer, Mr. Kuhls, to the mines shown on your Exhibits 115 and possibly 116 as operating rail mines. What you meant was that the mines shown on those exhibits were commercial mines that were served by railroads?

A. That is right.

Q. You made some reference to the mines in the Bedford, Indiana group. Those mines are still there, are they not, and the tipples are still there?

A. There is only one ramp. It isn't a tipple. I don't know about the tipples. This coal is produced in wagon mines. I presume wagon mines still exist, although they are not operating; but they were operating four or five years ago and shipped coal by rail, but they haven't done [fol. 2818] so in the past few years, and for that reason we are going to cancel the rates.

Q. But as far as you know the tipples and the mine equipment *is* still in the mine?

A. The wagon mines, yes, some distance from the railroad.

Q. Now, you said there were 173 destinations involved in these proceedings. Just what do you mean by that?

A. To which rates are changed from one or more groups.

Q. But there is no proposal to increase the rates from the Indiana groups, for example, to all of those 173 destinations?

A. No. The groups served by the Milwaukee Railroad are increased to 96 of those destinations without any reductions.

Q. You said, as I recall, that the rates from Southern Illinois were increased to 76 destinations. Aren't you mistaken about that? Aren't the rates proposed to be increased to 96 destinations, as shown in Witness Rozene's Exhibit 21, from the Southern Illinois group?

A. No. Our tabulation shows increases to 78 destinations.

Exam. Trezise: 78 is what he said.
Mr. Stadell: Yes.

By Mr. Stadell:

Q. And you didn't check Mr. Rozene's Exhibit No. 21 and find that there was anything wrong with that exhibit did you?

A. No——

Mr. Hunter: I object to that.

The Witness: We didn't. I didn't check that; I didn't [fol. 2819] refer to that, no, sir.

Q. Well, he is saying something contrary here. Now, Mr. Rozene has got an exhibit, No. 21, that shows that the rates from Southern Illinois are increased to 96 destinations in Illinois. It was taken from the tariffs that were under suspension.

A. The rates in the Indiana groups are increased to 96 destinations but our tabulations show that Southern Illinois was being increased to only 78 destinations.

Q. But you can't say that Mr. Rozene's Exhibit No. 21 is in error?

A. I haven't checked it.

Q. Will you give us the names of the 78 destinations—you don't need to do it right now, but submit it, because we would like to check it with the tariffs under suspension.

A. I just have the recapitulation here.

Q. I see.

A. I don't know whether the detail is available or not. I think it is.

Q. Well, if it could be checked from the tariffs under suspension, couldn't it?

A. Yes.

Q. Now, you referred to some reductions in the rates from the Southern Illinois group. Do you know whether there is any coal moving from the Southern Illinois group to any of the destinations to which the reductions would [fol. 2820] be made?

A. No investigation was made.

Q. I refer you to the first destination shown on Witness Rozene's Exhibit No. 21, to which a reduction would be made in the Southern Illinois rate of 5 cents per ton, that destination being Alpha, Illinois. Isn't there a mine located at Alpha, Illinois?

A. That is right.

Q. You wouldn't expect any additional tonnage or any tonnage to move from Southern Illinois to Alpha, would you, even though the rate was reduced 5 cents a ton?

A. No, sir.

Q. Now, you referred to certain mileages in the Commission's report in Docket 23130 from the Southern Illinois group, which you stated the Commission used, and you referred to those as the average mileages over the short rate-making route. Just what did you mean by the "short rate-making route"?

A. The Commission used the shortest mileage from Southern Illinois shown in the record.

Q. Wasn't that the average distance over the short tariff route from all mines on the Illinois Central which was considered to be the rate-making route from Southern Illinois?

A. That is what I said, the short-rate line; whereas they used the average from the entire group when they referred to the level of the Indiana rates.

[fol. 2821] Q. You mean when they referred to the level of the Brazil-Clinton rates?

A. The Brazil-Clinton rates.

Q. You are not taking in Princeton and Boonville?

A. Oh, no. They just comment about Brazil-Clinton.

Q. Now, you made some statement about the rates from the Head of the Lakes to points in South Dakota having been reduced to meet reductions from Illinois, and that that was because of certain gas-competitive fine coal rates established from Illinois. Can you tell me a single point in South Dakota to which the railroads have established reduced rates on fine coal to meet gas competition?

A. Sioux Falls.

Q. From Illinois?

A. No, not from Illinois.

Q. You know of no destination in South Dakota to which the railroads have established reduced rates on fine coal from Illinois mines to meet gas competition?

A. No, sir, not from Illinois. They reduced them from the Lake Superior docks to meet gas competition.

Q. Yes. And you refer to a rate from the Lake Superior docks to Sioux Falls, as being on the H. & H. scale. I assume you meant by that, based on the distance to Duluth only?

A. That is right.

Q. You were using only the large coal rate?

[fol. 2822] A. That is right.

Q. And the fine coal rate from the Head of the Lakes to Duluth is a dollar less than the large coal rate, is it not?

A. Correct.

Q. So if the large coal rate is on the Holmes and Hallowell basis, the fine coal rate is a dollar below the Holmes and Hallowell basis?

A. Yes, that is true of all rates prescribed by the Commission.

Q. Now, did you make a study to determine what percentage the rates from the Head of the Lakes to the other portions of South Dakota or North Dakota that you referred to are of the Holmes and Hallowell scale, and if you did, just exactly what mileages did you use?

A. I used the Duluth mileages.

Q. You used the Duluth mileage only?

A. That is right.

Q. And did you use the average mileage, or were they short tariff route, or did you use the method of computing mileage prescribed by the Commission in the Holmes and Hallowell case?

A. I used the short tariff route.

Q. But you used that from Duluth only and disregarded the mileage from all of the other Lake Superior dock points shown in Witness Rozene's Exhibits in these proceedings?

A. Yes.

By Exam. Trezise:

Q. Which, by the way, using the term "short tariff [fol. 2823] route", would be the same as the shortest tariff route if you used it from only one point, is that right?

A. That would be correct.

By Mr. Stadell:

Q. Well, where you had more than one railroad serving at Duluth, would you use the distance over the short tariff route of each of those railroads or would you use

the distance over the one railroad that had the shortest tariff route.

A. The shortest tariff route.

By Exam. Trezise:

Q. Well, then, what you meant was "shortest tariff route" and not "short tariff route"?

A. I agreed with you when you said if it was only one point, why, it would be the shortest.

Q. Then I am to blame for that. What you meant by that was the shortest tariff route?

A. Yes.

Q. The way you figured it?

A. Yes, the short tariff and the shortest tariff.

Exam. Trezise: I see.

By Mr. Stadell:

Q. And did you use only the rates on large coal or did you also use the rates on fine coal?

A. I used the rates on all sizes, which are the same.

Q. You took the points to which the rates were the same on both large and fine?

A. No, I took—I took what I thought was 19 representative points.

[fol. 2824] Q. Oh, you only took 19 points?

A. In North Dakota and South Dakota.

Q. Oh, I see. You only took 19 points?

A. I only had a few hours to make the compilation. I couldn't take any more than that.

Q. You are not in a position to say, are you, that the mileages or rates shown in Mr. Rozene's exhibits from the Head of the Lakes to the representative points that he has shown in South Dakota, Iowa and Minnesota, are in error?

A. No. I just claim it is a specious presentation.

Q. In other words, where he takes about 80 points and shows a certain picture, you think it is better to pick only 19 and take only one tariff route from one origin out of ten or twelve?

A. Why, I thought I justified what I did by saying that all the docks combined, outside of Duluth and Superior,

handle about one-tenth the amount of coal and that doesn't move to this territory.

Q. They do handle about a million tons of coal or more annually, don't they?

A. That is right. It doesn't move to the Holmes and Hallowell territory.

Q. But they have rates the same as the rates in effect from Duluth?

A. In a good many instances, yes, sir.

Q. And they have in practically all the instances, shown in [fol. 2825] Witness Rozene's exhibits, they have the same rates?

A. To that territory, yes.

Q. You know of no instances, do you, where the rates from the Lake Superior docks to destinations, talking about the rates on large coal from the Lake Superior docks to destinations in Iowa or South Dakota or Minnesota, have been reduced to meet reductions from Milwaukee, do you?

A. Well, the lines serving the docks at the Head of the Lakes for the past several years have been saying "me too." Every time Illinois gets a reduction, they ask for the same amount; and that has been the procedure.

Q. You know of no case where the rates from the Head of the Lakes on large coal have been reduced to meet any rate from Illinois into South Dakota, Minnesota or Iowa, do you? Talking about large coal.

A. Large coal?

Q. Yes.

A. No, I don't recall any.

Q. But you do know that any time that a rate on fine coal was established from the Illinois or Indiana mines to Southern Minnesota, for example, to meet gas competition, that the rates from the Lake Superior docks, although they were smaller in amount, were immediately reduced the same amount?

A. As soon thereafter as the publication could be effected.

Q. So that in all of those instances the rates from the Lake Superior docks would be substantially below the [fol. 2826] Holmes and Hallowell scale?

A. Oh, yes.

Mr. Stadell: That is all, thank you.

Exam. Trezise: Do we have further questions?

Mr. Cardy: Just one or two questions.

Exam. Trezise: Mr. Cardy.

By Mr. Cardy:

Q. Mr. Kuhls, I notice in page 2 of your Exhibit 116, from 1936 to 1942, there has been a rather substantial falling off in the production of coal from the Northern Illinois District; that is the Wilmington mines. When did the reduction go into effect from the mines of the Milwaukee to Rockford?

A. 1934.

Q. 1934?

A. April, 1934.

Q. Do you think there is any connection between the substantial reduction in 1936 and 1942 in connection with the reduction in the Milwaukee rates to Rockford?

A. As I see it here, there was a substantial increase; not a reduction.

Q. I say from 1936 to 1942, page 2.

A. No, I don't think it had any connection.

By Mr. Hunter:

Q. Do you see any substantial reductions on that page 2, Mr. Kuhls?

[fol. 2827] A. No, that is why I say I don't think he——

Mr. Hunter: I didn't either, and I asked the question to see if there is any justification for that implication.

Mr. Cardy: I say from 1936 to 1942.

Mr. Hunter: Yes, but where is there any substantial reduction on page 2 of Exhibit 116, Mr. Cardy?

Mr. Cardy: I am talking about 135,000 tons——

Mr. Hunter: In what line?

Mr. Cardy: Line 1. Northern Illinois Coal Company, 1936 production, 1,392,717 tons; 1942, 1,092,200 tons.

The Witness: I think probably that the mine was selling more coal to trucks and less by rail.

Mr. Cardy: Now, Mr. Kuhls, there is one other question I would like to ask you:

By Mr. Cardy:

Q. Do you know why they increased the rates from Wilmington to Rockford and some other points 20 cents a ton and only proposed the highest increase from any of the other mines 15 cents a ton. Can you explain that?

A. To what point, Mr. Cardy?

Q. To Rockford. In other words, the increase from Wilmington is 20 cents a ton proposed in this proceeding. From all of the other mines the maximum is 15 cents a ton.

A. That is to put it on the same basis as the origin points in the Northern Illinois district.

Q. Isn't it a fact that if you take that 5 cents under Ex Parte 115—in other words, when you increase the [fol. 2828] rates to Beloit from the Northern Illinois district, you increase 10 cents; to Rockford 5 cents. In this proceeding you just added that 5 cents to the 15 cents. Is not that true?

A. That is part of the answer I gave you before. It was to place Wilmington on the same basis as the other mines.

Exam. Trezise: Further questions?

Redirect examination.

By Mr. Hunter:

Q. Mr. Kuhls, referring to page 2 of Exhibit 116, will you point out the seven very substantial increases, if I am correct, in the tonnages between the years 1936 and 1942, which I think very many times offset the decrease referred to by Mr. Cardy.

[fol. 2829] Mr. Cardy: Now, Mr. Examiner——

Mr. Christiansen: It is all shown on the exhibit.

Mr. Hunter: I am asking him——

Mr. Cardy: I was talking about the Northern Illinois District and not the Fulton-Peoria district. If you confine yourself to the Northern Illinois field which I asked him about, all well and good.

By Mr. Hunter:

Q. Aren't all of these coal companies in the same district?

A. No, he was talking about the Wilmington mine or the Northern Illinois Coal Corporation mine, which is in Will County, Northern Illinois field, and most of the other fields are in the Fulton County group.

Q. On that page 2?

A. Yes.

Exam. Trezise: Any further questions?

By Exam. Trezise:

Q. Mr. Kuhls, did you also find that the carriers from the Head of the Lakes increase their rates to the Holmes and Hallowell territory each time the Commission finds that the rates from Illinois should be increased, as they did in the South Dakota case, upon a complaint that the rates were unreasonably high? That is a question.

A. No.

Exam. Trezise: Any further questions? (No response.) If not, you may be excused, Mr. Kuhls.

[fol. 2830] (Witness excused.)

Mr. Biaett: I call Mr. C. J. Nelson.

Exam. Trezise: Mr. Nelson.

Mr. Biaett: Mr. Examiner, Mr. Nelson has one exhibit which I shall ask to have marked Exhibit No. 117. It has been distributed. I have some extra copies if anyone would like one.

(Exhibit 117, Witness Nelson, marked for identification.)

C. J. Nelson recalled:

Direct examination.

By Mr. Biaett:

Q. Are you the same Mr. C. J. Nelson who previously testified in these proceedings?

A. I am.

Q. At the time you previously testified in these proceedings, did you introduce Exhibit No. 11?

A. Yes, sir.

Q. And since that exhibit was introduced, have you found some corrections which you would like to make in that exhibit?

A. I have.

Q. Will you please make those corrections.

A. I have one correction to make on line 7 of Exhibit No. 11. An error was made in counting the total number of origins that should be utilized in ascertaining the average distance, rate, and so forth, to the representative [fol. 2831] suspended points.

Under Column 1, number of origins, the figures should be 297 instead of 285. Under Column 2, total rate, the figures should be 46,953 instead of 45,033. In Column 5, average distance, the figures should be 163.9 instead of 170.8. Column 6, Holmes and Hallowell scale rate, the figures should be 207 instead of 219. And in Column 7, percentage average suspended rate is of H. & H. scale, the figures should be 76.3 instead of 72.1. Otherwise the exhibit is correct.

Q. Mr. Nelson, are you familiar with Witness Scott's exhibit 43 and the fact that he shows in that exhibit that no mileages are published from Templeton No. 4 mine in the Linton-Sullivan group?

A. Yes, sir. I believe Mr. Scott stated on the witness stand that he was unable to find any distances or tariff authority for distances from the Templeton mine No. 4. They are found in Supplement 37 to Pennsylvania Railroad Mileage Tariff ICC 397.

By Mr. Scott:

Q. Effective what date, please, Mr. Nelson?

A. I can't give you the effective date. I will supply that if you want me to.

Mr. Scott: I think it is important, please, to bring out the whole story.

Mr. Biaett: Well, if he wants it, may we submit it by letter to all parties after the hearing, Mr. Examiner? I don't [fol. 2832] know that we will be able to——

Exam. Trezise: Oh, I think so. I see no reason why not.

Mr. Biaett: I mean we will be agreeable to doing that.

Exam. Trezise: Very well. It will be a part of the record, is that what you mean?

Mr. Biaett: Well, I would be agreeable to have it incorporated into the record, if that is what Mr. Scott wants.

Exam. Trezise: All right, then, it will be understood that you will furnish the parties this information, to be incorporated as a part of the record.

Mr. Biaett: In the event——

Exam. Trezise: But not made an exhibit.

Mr. Biaett: In the event of our inability to furnish it before the close of the hearing.

Exam. Trezise: All right.

By Mr. Biaett:

Q. Mr. Nelson, have you prepared an exhibit which has been marked for identification as Exhibit No. 117?

A. I have.

Q. Will you please take up and explain that exhibit.

A. It is a statement showing the population for the year 1940 of the representative suspended and comparative points selected by the carriers; also the additional representative points selected by the Coal Trade Association of Indiana. The years shown in the heading of the statement of 1941—or the year 1941, should be changed to 1940.

(Exhibit 117, Witness Nelson, received in evidence.)

[fol. 2833] On the first 26 lines is shown the population of the representative suspended and comparative points selected by the rail carriers, and on the last 7 lines the population of the additional 6 points selected by the Coal Trade Association of Indiana. Authority for the figures is shown at the bottom of the statement.

Q. Mr. Nelson, are you familiar with the Blue Book adjustment which has been mentioned at various times in these proceedings?

A. Yes, sir.

Q. Will you please state the background of the Blue Book adjustment in connection with the rates which were published on July 19, 1925.

A. Well, the Commission in their order in the Illinois Coal cases of 1920, 62 ICC, authorized carriers to restore

differential adjustments that had been disturbed by the general percentage increases and decreases. However, in the so-called Blue Book adjujstment this was not done in many instances. Compromises were made. Therefore, all of the differentials that were in effect prior to that time were not restored.

Q. In your opinion, Mr. Nelson, should the rates published under the Blue Book adjustment be used as a guide or a yardstick to rates which might be prescribed in this proceeding?

A. No, not in all instances.

Q. Did you hear the testimony of Mr. H. V. Scott in these proceedings, Mr. Nelson?

[fol. 2834] A. I did.

Q. Are you in accord with the position of Mr. Scott with respect to the prescription of so-called standard differentials from the Princeton and Boonville groups to the suspended territory here involved?

A. No, I am not. I am supporting the rates that the carriers have published and which are now under suspension; but I am not in accord with Mr. Scott's proposal.

Mr. Hamilton has, in his direct statement, outlined my views on the matter, and in addition to what he has stated, I want to say that I think the differentials now in effect between the Northern Indiana groups and the Southern Illinois groups are too low and that the difference in distance justifies the greater spread.

I also think that the rates to Beloit should all be made 15 cents higher than the proposed rates to Rockford, and that the rates from the Southern Indiana groups to this affected territory should not be made lower than the rates from Southern Illinois, the distance from the Southern Indiana groups being equal to or greater than the distance from Southern Illinois.

Q. In constructing rates from Southern Illinois, do you have to take into consideration the level of and the relationship of the rates from the Princeton and Boonville groups?

A. Yes, sir, you should.

[fol. 2835] Q. Mr. Nelson, were you present when Mr. H. V. Scott testified that distance should not be a controlling element in determining the freight rate adjustment involved in these proceedings?

A. I was.

Q. What have you to say with respect to distance as a factor in determining the level of the rates and the relationship of the rates involved in these proceedings?

A. I don't agree with Mr. Scott's statement. I think that distance is of major importance in all differential adjustments, particularly where there is a parity of operating conditions and competition. Competition is a variable factor; and in this particular adjustment I think the Commission should give distance the major consideration.

Q. Do you think that commercial conditions should be, or competitive conditions should be considered in order to secure lower rates from a greater distant group?

A. Not to the extent of establishing rates from the Southern Indiana groups on a basis lower than those from the Southern Illinois group when their distance is greater. The commercial competition exists not only between the groups in Indiana but also between the groups in Indiana and the groups in Illinois, and I know of no reason why the rates from Indiana should be made lower than the rates from Illinois, when their distance from those groups is greater.

Q. Were you present when Mr. H. A. Rozene criticized the use of the Holmes and Hallowell scale as the measur- [fol. 2836] ing stick in comparing the level of the rates from the various groups in the carriers' exhibits?

A. Yes, sir.

Q. What have you to say with respect to the use of that scale for the purpose of comparing the respective levels of group rates?

A. Well, in the first place, the scale was prescribed by the Commission to apply on coal that had received prior transportation by rail and lake; and since it was prescribed, it has been used by the carriers and others in almost every rate case that has been heard. It has been used by the Commission as a yardstick in prescribing rates or approving rates, and I don't see any reason why it should be discarded in this instance. It isn't 100 per cent perfect, but I don't think any scale is 100 per cent perfect.

At least, in the opinion of everyone, and where you have comparable distances, such as we have in this Northern Illinois adjustment, and you are comparing distances from one group to suspended points with distances from the

same group to representative comparative points, where the difference is not very great, I don't see any reason why it isn't a proper yardstick.

To illustrate, the average distance from Fulton County field to the representative suspended points is 163.9 miles, and to the representative comparative points it is 184 miles. [fol. 2837] That difference in distance certainly doesn't prevent the H. & H. scale from being used as a yardstick. You could make similar comparisons in distance from other groups.

Q. That is in comparing the level of the Interstate rates with the level of the intrastate rates?

A. That is right.

Q. Are you familiar with the traffic moving under the H. & H. scale?

A. Yes, in a general way.

Q. Does that coal traffic pay prior transportation charges prior to the time that it moves out from the Lake Superior docks under the H. & H. scale rates?

A. It does.

Q. Do you have those transportation charges?

A. Well, I have some of them. The lake cargo rate from the Inner Crescent groups in the East to Lake Erie ports is $1.91. The dumping charge is 9 cents and the vessel rate from Lake Erie ports to docks on Lake Superior is generally 50 cents. It varies. That makes a total charge of $2.50.

Now, from the Pittsburg group, the lake cargo rail rate is $1.56, the dumping charge 9 cents plus the charge of 50 cents, makes a total of $2.15.

Q. Have you finished your answer to that question, Mr. Nelson?

A. Yes, sir.

Q. Are you familiar with the exhibits introduced by Mr. A. J. Christiansen in these proceedings?

[fol. 2838] A. Yes, I am.

Q. In those exhibits, does Mr. Christiansen compute the distances from Alpha, Atkinson, Victoria, the mines in Fulton County and the mines at Peoria as one group?

A. Yes, sir.

Q. Do you have any comments to make with respect to the propriety or impropriety of computing the distances in that manner?

A. Yes, sir, to this territory in Northern Illinois I don't think it is proper to show or to publish rates from the various districts, that is Atkinson, Alpha, Victoria and Fulton County and Peoria as one group. We don't do it today and it seems to me that the conditions that exist don't justify doing so in the future.

Atkinson is located east of Rock Island, Illinois, about 70 miles north and east of Fulton County; mostly north. Victoria is located east of Galesburg 17 miles, about 62 miles from Fulton County. Alpha is 18 miles north of Galesburg, about 63 miles from Fulton County.

There is just as much justification for including Rushville in the Fulton-Peoria group, which point is about 30 miles south of Fulton County, as there is of grouping all of these other points together. I don't see any objection to grouping Fulton County and Peoria in the same group. At the present time the rates from Victoria are in many instances [fol. 2839] less than the rates from Fulton County to this affected territory; and that is true to some extent with the rates from Alpha.

The Illinois Commerce Commission and also the Interstate Commerce Commission have said to points in Northern Illinois and in Western Iowa, the rates from Alpha should be less than the rates from Fulton County.

Therefore, for these reasons I think we should continue to publish rates from the groups separately. When you establish rates from those groups to greater distances to points beyond a line 130 miles west of Davenport or points up in Wisconsin, then I see no objection to making the rates from all of them the same.

Q. Mr. Nelson, did you hear the testimony of Mr. A. J. Christiansen in these proceedings?

A. Yes, sir.

Q. What have you to say with respect to the level of the rates which should apply from Fulton County or Fulton-Peoria to the suspended territory and the manner in which those rates should be constructed?

A. Mr. Christiansen's theory is that as the distance decreases, the difference should increase. Stating it another way, rates from Fulton County to destinations in Northern Illinois to which the hauls are short, the difference in rates between Fulton County mines and those in Southern

Illinois should be greater than the difference in rates to [fol. 2840] points in Northern Wisconsin or in Minnesota, and so forth.

That rule may be all right as the general formula, but it has been departed from many times and I think it should be in this instance, where you have a low level of rates with the lower Illinois groups or the Illinois groups such as you have in this group to the Northern Illinois destinations, and you establish rates from Fulton County to those same destinations that are 79 cents or some other figure lower than the rates from Southern Illinois, you get a level of rates from the Fulton County District that is entirely too low. I think you should take into consideration the measure of the rates affecting carriers' revenue in working out adjustments of this kind.

Q. In your opinion, should Southern Illinois and Fulton-Peoria be related on some differential or identical differential applying at all points, Mr. Nelson?

A. Not in this Northern Illinois area, no, sir.

Q. Were you present, Mr. Nelson, when Mr. Forsberg stated that the switching charges in the Chicago district were $30 per ton?

A. I was.

Mr. Stadell: Per ton?

By Mr. Biaett:

Q. $30 per car; excuse me.

A. Yes, sir.

Q. Do you have the switching charges at Chicago and can you read them into the record?

[fol. 2841] A. Yes, sir. They are in reality not switching charges. They are differences of rates that the delivering lines receive. They are published as divisions.

Where a delivery is made by a line having direct connection with a roadhaul carrier, the charge is $1.59 per hundred, or 31.8 cents per ton. That is published in Division Sheet 54-B, ICC 399, under Chicago Switching Committee Tariff 27-G, R. G. Rassch, Agent.

Where there is an intermediate carrier involved, that intermediate line gets $5.83 per car. That is in addition to the 31.8 cents per car.

Q. Does that figure which you have given include the Ex Parte 148 increase, Mr. Nelson?

A. It does.

Q. And how much was that increase?

A. Well, on the rate—the division prior to the time it was made 31.8 was 30 cents, so the increase was 1.8 cents per ton.

Mr. Biaett: Mr. Examiner, I have obtained from Mr. Rozene the effective date of that tariff. If Mr. Scott has no objection, we can supply it into the record and we will make no further comment on it unless their——

Exam. Trezise: All right.

Mr. Biaett: Unless you find out that this is incorrect.

Exam. Trezise: Put it in the record.

Mr. Biaett: The effective date of the Pennsylvania [fol. 2842] tariff to which Mr. Nelson referred was July 20, 1942.

Exam. Trezise: Are you through?

Mr. Biaett: That is all we have on rebuttal.

Mr. Christiansen: I have a few questions.

By Exam. Trezise:

Q. Now, is it, Mr. Nelson, your understanding that Mr. Rozene did undertake to compare the rates involved with a so-called Holmes and Hallowell scale that is applied on traffic originating beyond the dock, or on any other traffic?

A. Mr. Rosene criticized the carriers for using the H. & H. scale as a yardstick. At least that is the way I understood his testimony. He did, however, use the scale himself in one exhibit, Exhibit No. 98, even though he thought it wasn't a proper yardstick.

Q. I asked that because there is always so much misunderstanding and confusion every time anybody mentions the Holmes and Hallowell scale. I didn't know that Mr. Rozene used the Holmes and Hallowell scale as a measure of reasonableness, but he did, as I understood, make some sort of a comparison with a case that was prescribed, plus 15 cents. I understood that that was—well, that isn't the scale that was applied on this traffic.

Mr. Biaett: Well, Mr. Rozene, Mr. Examiner, also made some comparison with the rates actually published and the routes.

Exam. Trezise: Oh, yes.

Mr. Biaett: Over which the traffic moved, and then com-[fol. 2843] pared that with the Midland scale to reach a conclusion on his exhibit that the Midland scale was on a higher level than the H. & H. scale; and it is my purpose to have Mr. Nelson refer to the general background of the H. & H. scale to have the record clear on just what traffic was moving under the H. & H. scale.

Exam. Trezise: All right, questions?

Mr. Christiansen: Yes.

Cross examination.

By Mr. Christiansen:

Q. Mr. Nelson, when you read the figures in for the correction of your Exhibit No. 11, you read in Column 2 on line 7, 46,953.0?

A. Yes, sir.

Q. That figure divided by 297 averages 158.1. Didn't you get the wrong figure there?

A. 46,953 is the figure I gave. 297 origins. 158.1; I have 158 here.

Q. Well, I think you got——

A. Just one-tenth of a cent——

Q. I think you got the rate total instead of the mileage total when you read this into the record. You haven't got the right total for line 2 today. I have that correct total if you want it. The correct total is 48,684.0.

A. That is the total rate?

Q. Of the mileages.

[fol. 2844] A. Total mileages.

Q. Yes, sir.

A. The total mileage I have is 48,684.0. That is what I have in column 3.

Mr. Hamilton: You didn't read column 3, did you?

The Witness: I didn't read column 3. I didn't correct that at all.

Mr. Christiansen: O. K.

By Mr. Christiansen:

Q. Now, Mr. Nelson, I take it, in reply to Mr. Biaett's question with reference to the grouping of the origin points

in the so-called Alpha, Atkinson, Victoria and Fulton-Peoria groups, that to this short haul territory you don't believe that the large groups should be used?

A. That is right.

Q. I take it from that that you are of the opinion that lower rates than the Fulton-Peoria rates ought to be used from Atkinson, Alpha and Victoria to give them the benefit of their mileages to these short haul destinations, is that right?

A. They have today in some instances the lower basis.

Q. Atkinson doesn't have any lower rates, does it, that you know of, to a single destination in this territory than Fulton County?

A. It may not; I don't know.

Q. Alpha has lower rates only to one destination and that is Amboy, in this entire territory?

[fol. 2845] A. It has to some destinations in the western part of this territory. I don't know whether it is one, two or three.

Q. By not using the Atkinson, Alpha and Victoria mileages in establishing a level of rates from Fulton County, I presume you would give them the benefit of their shorter mileages in establishing their rates so that they would have a differential under Fulton County, would you not?

A. If their rates were on an unreasonable basis, I certainly would. I don't think they are.

Q. You think that they ought to have the same rate as Fulton County but they shouldn't use the mileage in ascertaining the level of the entire group?

A. That is correct.

Q. But you do think to points beyond, we will say, the short haul territory, that they might well be grouped as the so-called Fulton-Peoria group?

A. When you get a further distance away, I can see no objection to grouping those points in one group. As a matter of fact, I think that is generally done today.

Q. Now, Mr. Nelson, in connection with the theory of decreasing differentials as mileage increases, or stated the other way, increasing differentials as mileage decreases, do you think that the territory in the Northern Illinois group should receive different treatment than is accorded the territory throughout the country, such as the Arkansas, Southwestern territory, the Springfield district, in relation

[fol. 2846] to Southern Illinois, the Indiana district in relation to Indiana, if you had the Inner and Outer Crescents in relation to each other or to the rest of the territory?

A. I think that each adjustment should be considered on the conditions that exist and you can't follow any formula or general formula to the letter; that you have to take into consideration the level of the rates, the distances involved.

Q. Now, Mr. Nelson, isn't it a fact that relatively the level of the rates for short-haul points is higher where the differential is low as between two origin groups than where the differential is high?

A. I don't know; I haven't made any study of that.

Q. Isn't it also a fact that where the differential is low as between two origin groups, the longer distance rates are generally much lower than they would be if the differential were higher?

The Witness: Will you read that question to me, please, Miss Reporter.

(Question read.)

The Witness: I don't understand that question.

Mr. Christiansen: Well, let me put it another way:

By Mr. Christiansen:

Q. Today we have a 70 cent differential Southern Illinois over Fulton-Peoria at Cedar Rapids, Iowa. If that differential were made 50 cents by reducing the Southern Illinois [fol. 2847] rate, would not the level of rates from Southern Illinois be much lower?

A. Sure.

Q. And isn't that the condition——

A. Lower than it is today, you mean?

Q. Yes.

A. Certainly.

Q. And isn't that the situation that exists into this Northern Illinois territory, that by the establishment of a 50 cent differential over Fulton-Peoria at Dixon, as an illustration, or a 60 cent differential at Rockford, that the level of rates from the Southern Illinois district becomes much lower than it would be if a 70 cent differential were established or a 79 cent differential were established?

A. I think perhaps you are talking about a different thing. You are assuming that the rates from Southern

Illinois would be made 50 cents over Fulton County. I maintain there is no relationship today, that the rates from Fulton County to this Northern Illinois territory should not be definitely related to those from Southern Illinois. I have given reasons for my position.

Q. But it is a fact that in every short haul territory the differential, except this particular one, increases as you approach the point of origin?

A. I don't know that to be true.

[fol. 2848] Mr. Christiansen: That is all.

Mr. Wilkinson: May I ask one question?

Exam. Trezise: Mr. Wilkinson.

By Mr. Wilkinson:

Q. Mr. Nelson, you have advocated here very strenuously that because the distance from Princeton-Ayrshire and from Southern Illinois is substantially the same, that the rates from those two groups should be the same to this destination territory.

A. They certainly——

Q. Now, is it not a fact that to most of these destinations the distances from the Springfield group and the Brazil-Clinton group are substantially the same. Is that a fact?

A. Well——

Q. I am leaving out Dixon and Rochelle from those to the south end, but I say to most of them.

A. Well, to the representative suspended points, according to Exhibit No. 11 which I submitted, the distance Brazil-Clinton over Springfield is 24 miles.

Q. Yes.

A. Difference in distance of 24 miles.

Q. But to all of those points, excluding Dixon, where the difference favors Springfield, you and the other carriers are proposing rates from Brazil-Clinton that are substantially higher than the proposed rates from Springfield, are you not?

A. We are proposing to increase the rates that are now in effect——

[fol. 2849] Q. Well, they result in rates, the present rates from Brazil-Clinton are substantially higher than the present rates from Springfield?

A. Let me finish my answer, Mr. Wilkinson.

Q. Yes, sir,

A. We are proposing to maintain, as near as possible, the present adjustment, increase the rates from all districts the same amount.

Now, if the present rates are higher than Springfield, well, they will be higher than Springfield. If they are lower than Springfield, they will continue lower than Springfield.

Q. What I want to know, Mr. Nelson, is why you, as a rate man, giving your expert opinion here, recommend to this Commission to establish a parity of rates from Southern Illinois and Princeton because the distances from the two groups to these destinations are substantially the same, while as between Springfield, Illinois, and Brazil-Clinton you do not make the same recommendation.

A. My recommendation is, if you call it such, was suggested as a comment on Mr. Scott's proposal. The carriers are not proposing to change the relationship in this instance in the rates that are under suspension.

Mr. Wilkinson: All right, that is all.

Mr. Bather: I have a question.

By Mr. Bather:

Q. Mr. Nelson, to what extent does the Burlington [fol. 2850] participate in the rates from the Indiana groups to the affected territory?

A. We do not participate in any of them.

Q. Now, your testimony regarding the absorption of switching or what you call divisions, the figure that you gave of $5.50, which excludes the Ex Parte 148 increases, is that figure you gave the maximum absorption of switching in the Chicago district?

A. It may not be, but I think that is more than the average, because usually the line that makes the delivery has a direct connection with the road-haul line.

Q. That is also true as far as coal to Rockford is concerned, isn't it?

A. What do you mean it is also true as far as coal to Rockford?

Q. In other words, if you bring the coal in on the line haul and you make delivery to an industry on the Bur-

lington at Rockford, you don't have to absorb that switching?

A. That is correct.

Q. If you make it on to a point on the North Western or the Illinois Central, you do absorb switching?

A. Certainly, yes, sir.

Mr. Bather: That is all.

Mr. Stadell: I have just one question or two.

By Mr. Stadell:

Q. You stated that it was your position, Mr. Nelson, that when it came to measuring or prescribing the rates [fol. 2851] from two groups, such as the Princeton group on the one hand and the Southern Illinois group on the other, or the Princeton group on the one hand and the Belleville, Illinois group on the other to the territory involved, that in view of the fact that transportation conditions were substantially the same, that distance should be the major factor and that the group with the longer distance should not have a lower rate than the group with the shorter distance?

A. Yes, sir.

Q. And you thought that the Commission should follow that principle in passing upon the rates involved in these proceedings?

A. Yes, sir.

Q. Now, you would not, therefore, expect or want the Interstate Commerce Commission, in the event that they approved or prescribed the rates that have been suggested by the Indiana interests or which were approved by the Commission in I. & S. 4368, from the Princeton and Boonville, Indiana groups, which disregard distances, to issue a 13th Section order such as the railroads request, requiring the increases that the railroads have proposed in the rates from the Southern Illinois group, would you?

A. You mean increase the rates from Illinois and not increase the rates from Indiana?

Q. That is right.

[fols. 2852-2856] A. No, I wouldn't want that.

Q. And you wouldn't want any 13th Section order requiring that?

A. No, I wouldn't want that.

[fols. 2857-2859] Exam. Trezise: Put at the end here that the briefs will be due December 1, 1943, or nobody will ever find it in that.

The hearing is closed, and on behalf of the Examiners I think we want to express our kind consideration of all of you gentlemen, through these tedious days, in keeping a very complicated record perfectly clear, even that the wayfaring man can understand it.

(Hearing in I. C. C. Dockets 28881 and I. & S. Docket 5139 closed; hearing in Ill. C. C. Docket 30935 continued sine die.)

PETITIONERS' EXHIBIT NO. 8

RATES AND CHARGES PUBLISHED IN THIS SUPPLEMENT ARE SUBJECT TO THE PROVISIONS OF TARIFF OF INCREASED RATES AND CHARGES X-148, AGENT B.T. JONES' I.C.C. 3659, I.R.C. D-693, Ill.C.C. 475.

CHARGES RESULTING FROM THE RATES NAMED IN THIS TARIFF AND AS AMENDED ARE SUBJECT TO THE PROVISIONS OF TARIFF OF CURRENCY EQUALIZATION CHARGES, B.T. JONES' (AGENT) TARIFF NO. 529-B, I.C.C. 3448. EXPIRES WITH SEPTEMBER 24, 1943, UNLESS SOONER CANCELLED, CHANGED OR EXTENDED.

SUPPLEMENTS 23, ⊕ 28, ① 43, 44, 46, ② 50 +50B, +ø50C AND 51 CONTAIN ALL CHANGES.

SUPPLEMENT 51
TO
I.C.C. 2367
I.R.C. 219
Ill.C.C. 146

① Ex Parte 148 (B-470).
② Items 5A, 10A and 12A has been suspended by the Illinois Commerce Commission by Supplement +50C.
⊕ Blanket Supplement 454.
\+ Illinois Intrastate Supplement.
ø Suspension Supplement.

TARIFF 60-F

THE PENNSYLVANIA RAILROAD COMPANY

In Connection With
Participating Carriers Named on Pages 3 and 4 of Tariff and as Amended

LOCAL, JOINT AND PROPORTIONAL FREIGHT TARIFF
Naming Rates in Cents per 2000 Pounds (Except as Noted)

- on -

C O A L, B I T U M I N O U S, C A R L O A D S
(As Described in Items 5A, 10A and 12A, Page 66 of Tariff as Amended).

FROM STATIONS ON	TO STATIONS IN	
ILLINOIS TERMINAL COMPANY PENNSYLVANIA RAILROAD (West of Pittsburgh, Pa., Oil City, Pa., Erie, Pa.) As Named on Page 5 of Tariff and as Amended.	ARKANSAS COLORADO ILLINOIS INDIANA IOWA KANSAS KENTUCKY LOUISIANA MICHIGAN	MINNESOTA MISSOURI MONTANA NEBRASKA NORTH DAKOTA OHIO SOUTH DAKOTA WISCONSIN WYOMING
	As Named on Pages 6 to 64 of Tariff and as Amended.	

ALSO

M I L E A G E R A T E S
(Within State of Illinois)
As Named on Page 304 of Tariff

Departure from the terms of Rule 28(a) of Tariff Circular 20 is authorized under Special Permission of the Interstate Commerce Commission No. 154301 of July 3, 1936.

Departure from the terms of Rule 9(e) of Tariff Circular No. 20 is authorized under permission of the Interstate Commerce Commission No. 7920 of March 17, 1942.

ISSUED JULY 1, 1942.

EFFECTIVE AUGUST 2, 1942.

J. T. CARBINE,
Coal Traffic Manager,
Philadelphia, Pa.

By:- O. P. SHAW,
Chief of Tariff Bureau,
15 N. 32nd Street,
Philadelphia, Pa.

C. H. LIPPINCOTT,
Assistant Coal Traffic Manager,
Philadelphia, Pa.

H. W. LARGE,
General Coal Freight Agent.
Chicago, Ill.

M. E. KLEIN,
Coal Freight Agent,
Chicago, Ill.

(1600)

RECEIVED		
Month	Day	Year

AGENT'S INDEX 324.

(Box 113)
Printed in U.S.A.

C-35 (106-72) P6

2860

1614

Reissued, except as noted, from Supplement	TAKING EFFECT	Page of Tariff Affected		Sta-tion No.	TO STATIONS shown on pages 6 to 64 of Tariff, indicated by NUMBERS AND NAMES	From Stations of Origin Named on Page 5 of Tariff indicated by Group Numbers: GROUPS 1,2 Lump Rate	GROUPS 1,2 Fine Rate	Route No.	GROUP 3 Lump Rate	GROUP 3 Fine Rate	Route No.	GROUP 4 Lump Rate	GROUP 4 Fine Rate	Route No.	GROUP 5 Lump Rate	GROUP 5 Fine Rate	Route No.
					PARTICIPATING CARRIERS As Shown in Tariff and Supplements 23, 44 and 50												
					BITUMINOUS COAL AS DESCRIBED IN ITEMS 5A AND 10A, PAGE 66 OF TARIFF (AS AMENDED) Rates in Cents per Ton of 2000 Pounds For Routes, see Pages 307 to 318 of Tariff												
					CHICAGO AND NORTH WESTERN RAILWAY												
				90	Geneva.....Ill	(48) ♦189	(48) ♦189	1,3	(48) ♦194	(48) ♦194	1,3	(48) ♦195	(48) ♦195	6,7	(48) ♦175	(48) ♦175	2
				95	La Fox.....Ill												
				100	Elburn.....Ill	♦189	♦189	1,3	♦194	♦194	1,3	♦195	♦195	6,7	♦175	♦175	2
				105	Maple Park....Ill												
				110	Cortland.....Ill	♦189	♦189	1,3	♦194	♦194	1,3	(3) ♦195	(3) ♦195	6,7	(3) ♦175	(3) ♦175	2
				115	De Kalb.....Ill												
				120	Malta.....Ill												
				125	Creston.....Ill												
				130	Rochelle.....Ill												
				135	Flagg.....Ill												
				140	Ashton.....Ill												
⊙	8-2-42 (E585)	82	Change and Sup.44	145	Franklin Grove.....Ill	♦189	♦189	1,3	♦199	♦199	1,3	(3) ♦195	(3) ♦195	6,7	(3) ♦175	(3) ♦175	2
				150	Nachusa.....Ill												
				155	Dixon.....Ill												
				160	Nelson.....Ill												
				165	Sterling(Rock Falls).....Ill												
				235	Gilberts.....Ill												
				245	Huntley.....Ill												
				250	Union.....Ill	197	197	1,3	202	202	1,3	♦215	♦215	4,8	♦195	♦195	2
				255	Marengo.....Ill												
				260	Garden Prairie, Ill												
				265	Belvidere.....Ill												
				270	Cherry Valley.Ill												
				275	Rockford.....Ill												
				280	Winnebago.....Ill	♦212	♦212	1,3	♦217	♦217	1,3	(3) ♦215	(3) ♦215	4,8	(3) ♦195	(3) ♦195	2
				285	Pecatonica....Ill												
				290	Ridott.....Ill												
				295	Freeport.....Ill												
				315	St.Charles....Ill	♦189	♦189	1,3	♦194	♦194	1,3	♦195	♦195	4,8	♦175	♦175	2
⊙	8-2-42 (E585)	83	Change	350	Dundee.....Ill	210	210	1,3	219	219	1,3	♦230	♦230	4,8	♦210	♦210	2
				420	Sycamore.....Ill	♦189	♦189	1,2, 3	♦194	♦194	1,3	(3) ♦195	(3) ♦195	6,7	(3) ♦175	(3) ♦175	2
⊙	8-2-42 (E585)	89	Change	4125	Roscoe.....Ill	♦227	♦227	1,3	♦232	♦232	1,3	230	230	4,8	210	210	2
						M	M	1,2	M	M		M	M		M	M	

BITUMINOUS COAL AS DESCRIBED IN ITEMS 5A AND 10A, PAGE 66 OF TARIFF (AS AMENDED)
Rates in Cents per Ton of 2000 Pounds
For Routes, see Pages 307 to 318 of Tariff

Reissued, except as noted, from Supplement	TAKING EFFECT	Page of Tariff Affected		Station No.	TO STATIONS shown on pages 6 to 64 of Tariff, indicated by NUMBERS AND NAMES	From Stations of Origin Named on Page 5 of Tariff indicated by Group Numbers											
						GROUPS 1,2		Route No.	GROUP 3		Route No.	GROUP 4		Route No.	GROUP 5		Route No.
						Lump Rate	Fine Rate		Lump Rate	Fine Rate		Lump Rate	Fine Rate		Lump Rate	Fine Rate	
					CHICAGO, BURLINGTON & QUINCY RAILROAD												
				715	Rockford.....Ill	....	....	...	....	....	...	(11) ♦215	(11) ♦215	6	....	....	...
				950	Alpha.....Ill	....	....	...	....	....	...	♦195	♦195	5	....	....	...
⊙	8-2-42 (E585)	105 106	Change	1470 1480 1485 1490 1495	Fenton.....Ill Erie.....Ill Hillsdale.....Ill Joslin.....Ill Osborn.....Ill	♦201	♦201	1	....	....	...	....	....	...	....	....	...
				1565	Barstow.....Ill	(3) ♦205	(3) ♦205	1	(3) ♦215	(3) ♦215	7	(3) ♦195	(3) ♦195	6	....	....	...
⊙	8-2-42 (E585)	107	Change	1570 1575 1580 1585 1590 1595 1600 1605 1610	Cleveland.....Ill Colona.....Ill Briar Bluff...Ill Warner.....Ill Orion.....Ill Lynn.....Ill Opheim.....Ill Henderson.....Ill Rio.....Ill	....	....	...	....	....	...	(3) ♦195	(3) ♦195	5	....	....	...
					CHICAGO GREAT WESTERN RAILROAD												
				50	St. Charles...Ill	♦189	♦189	1,2	♦194	♦194	1,2	(3) ♦195	(3) ♦195	3,4, 5,6	....	....	...
				60 65 70 75	Wasco.....Ill Lily Lake.....Ill Virgil.....Ill Richardson....Ill	♦189	♦189	1,2	♦194	♦194	1,2	195	195	3,4, 5,6	....	....	...
				80 82	Sycamore.....Ill De Kalb.....Ill	♦189	♦189	1,2	♦194	♦194	1,2	(3) ♦195	(3) ♦195	3,4, 5,6	....	....	...
				84	Five Points...Ill	♦189	♦189	1,2	♦194	♦194	1,2	(3) ♦195	(3) ♦195	3,4, 5,6	....	....	...
⊙	8-2-42 (E585)	122 and Sup.44	Change	85	Wilkinson.....Ill	♦195	♦195	1,2	♦200	♦200	1,2	(3) ♦195	(3) ♦195	3,4, 5,6	....	....	...
				90	Clare.....Ill	♦207	♦207	1,2	♦212	♦212	1,2	(3) ♦200	(3) ♦200	3,4, 5,6	....	....	...

⊙	8-2-42 (E585)	122 Change and Sup.44	84	Five Points...Ill	↓189	↓189	1,2	↓194	↓194	1,2	③ ♦195	③ ♦195	3,4, 5,6	....	....	...
			85	Wilkinson.....Ill	♦195	♦195	1,2	♦200	♦200	1,2	③ ♦195	③ ♦195	3,4, 5,6	....	....	...
			90	Clare.....Ill	♦207	♦207	1,2	♦212	♦212	1,2	③ ♦200	③ ♦200	3,4, 5,6	....	....	...
			95 Esmond.....Ill 100 Lindenwood....Ill 105 Holcomb.....Ill 110 Stillman Valley.....Ill 115 Byron.....Ill 120 Myrtle.....Ill 125 Egan.....Ill 130 German Valley.Ill		♦207	♦207	1,2	♦212	♦212	1,2	③ ♦210	③ ♦210	3,4, 7	....	....	...
			135	South Freeport.....Ill	♦207	♦207	1,2	♦212	♦212	1,2	③ ♦210	③ ♦210	3,4	....	....	...

For explanation of abbreviations and reference marks, except as shown below, see pages 3, 4 and 65 of tariff and as amended.

⊙ Additions, cancellations and changes effected by this supplement.

♦ Increase.

↓ Reduction.

2862

1941

Reissued, except as noted, from Supplement	TAKING EFFECT	Page of Tariff Affected		BITUMINOUS COAL AS DESCRIBED IN ITEMS 5A AND 10A, PAGE 66 OF TARIFF (AS AMENDED) Rates in Cents per Ton of 2000 Pounds For Routes, see Pages 307 to 318 of Tariff													
				Station No.	TO STATIONS shown on Pages 6 to 64 of tariff, indicated by NUMBERS AND NAMES	From Stations of Origin named on Page 5 of Tariff indicated by Group Numbers											
						GROUPS 1,2		Route No.	GROUP 3		Route No.	GROUP 4		Route No.	GROUP 5		Route No.
						Lump Rate	Fine Rate		Lump Rate	Fine Rate		Lump Rate	Fine Rate		Lump Rate	Fine Rate	
					CHICAGO, MILWAUKEE ST. PAUL AND PACIFIC RAILROAD												
				565 570 575	Davis Jct....Ill Stillman Valley.....Ill Byron.....Ill	♦207	♦207	1,2, 13	♦212	♦212	1,2, 13	③ ♦210	③ ♦210	3	③ ♦190	③ ♦190	14
				580 585	Leaf River...Ill Adeline.....Ill	♦207	♦207	1,2, 13	♦212	♦212	1,2, 13	③ ♦210	③ ♦210	3	③ ♦190	③ ♦190	14
⊙	8-2-42 (E585)	129	Change and Sup.44	590	Forreston....Ill	♦207	♦207	1,2, 13	♦212	♦212	1,2, 13	③ ♦210	③ ♦210	3	③ ♦190	③ ♦190	14
				595	Harper.....Ill	♦207	♦207	1,2, 13	♦212	♦212	1,2, 13	③ 215	③ 215	3	③ ♦190	③ ♦190	14
				605 607	Lanark.....Ill Fay.....Ill	♦207	♦207	1,2, 13	♦212	♦212	1,2, 13	215	215	3	♦190	♦190	14
				698	Bradt.....Ill	♦189	♦189	7	....	....	...	204	204	④3	....	....	...
				699	De Kalb.....Ill	♦189	♦189	7	....	....	...	③ ♦195	③ ♦195	④3	....	....	...
				700 701 702	Chase.....Ill Troxel.....Ill Duffin.....Ill	184	184	7	....	....	...	♦195	♦195	④3	....	....	...
				725 730 735	Holcomb.....Ill Kings.....Ill Flag Center..Ill	♦207	♦207	1,2, 13	♦212	♦212	1,2, 13	③ ♦210	③ ♦210	3	③ ♦190	③ ♦190	14
				740	Rochelle.....Ill	♦189	♦189	④ 21	♦199	♦199	④ 21	♦195	♦195	3	③ ♦175	③ ♦175	④ 22
⊙	8-2-42 (E585)	130	Change and Sups. 23 and 44	745 750 755 760	Steward Jct..Ill Scarboro.....Ill Roxbury.....Ill Welland.....Ill	♦185	♦185	④ 21	♦195	♦195	④ 21	♦195	♦195	3	③ ♦175	③ ♦175	④ 22
				765	Mendota.....Ill	♦180	♦180	④ 21	♦190	♦190	④ 21	♦190	♦190	3	170	170	④ ♦22
				767 770 775 790 805 810 825 840	Peterstown...Ill Pitchmoor...Ill Ladd.....Ill Cherry.....Ill Seatonville..Ill Howe.....Ill De Pue.....Ill Moronts.....Ill	♦180	♦180	④ 21	♦190	♦190	④ 21	♦190	♦190	3	♦170	♦170	④ 22
				845 860 865 870	Granville....Ill Standard.....Ill Cedar Point..Ill Oglesby.....Ill	♦180	♦180	④ 21	♦190	♦190	④ 21	③ 190	③ 190	3	③ 170	③ 170	④ ♦22

				1020	Beloit.....Wis	⋈ ♦227	⋈ ♦227	1,2, 12, 13	⋈ ♦232	⋈ ♦232	1,2, 12, 13	⋈ 230	⋈ 230	3	⋈ 210	⋈ 210	14
				1050	Rockton.....Ill	♦217	♦217	1,2, 12, 13	♦222	♦222	1,2, 12, 13	♦230	♦230	3	♦210	♦210	14
⊙	8-2-42 (E585)	131	Change	1065	Roscoe Siding, Ill	♦217	♦217	1,2, 13	♦222	♦222	1,2, 13	♦230	♦230	3	♦210	♦210	14
				1070	Latham Park..Ill												
				1085	Rockford.....Ill	♦212	♦212	1,2, 13	♦217	♦217	1,2, 13	♦215	♦215	3	♦195	♦195	14
				1100	Shirland.....Ill												
				1105	Durand.....Ill												
				1110	Davis.....Ill	♦217	♦217	1,2, 13	♦222	♦222	1,2, 13	♦230	♦230	3	♦210	♦210	14
				1115	Rock City...Ill												
				1120	Dakota.....Ill												

For explanation of abbreviations and reference marks, except as shown below, see pages 3, 4 and 65 of tariff and as amended. ⊙ Additions, cancellations and changes effected by this supplement.
Ⓓ Combination rates will apply via routes not brought forward. Increase. ♦ Increase.
⋈ Issued in compliance with order of the Interstate Commerce Commission in Docket 25419. ♦ Reduction.

Reissued, except as noted, from Supplement	TAKING EFFECT	Page of Tariff Affected		BITUMINOUS COAL AS DESCRIBED IN ITEMS 5A AND 10A, PAGE 66 OF TARIFF (AS AMENDED) Rates in Cents per Ton of 2000 Pounds For Routes, see Pages 307 to 318 of Tariff													
				Station No.	TO STATIONS shown on Pages 6 to 64 of tariff, indicated by NUMBERS AND NAMES	From Stations of Origin named on Page 5 of Tariff indicated by Group Numbers											
						GROUPS 1,2		Route No.	GROUP 3		Route No.	GROUP 4		Route No.	GROUP 5		Route No.
						Lump Rate	Fine Rate		Lump Rate	Fine Rate		Lump Rate	Fine Rate		Lump Rate	Fine Rate	
					CHICAGO, MILWAUKEE ST. PAUL AND PACIFIC RAILROAD												
⊙	8-2-42 (E585)	131	Change	1125	Freeport.....Ill	♦212	♦212	1,2, 13	♦217	♦217	1,2, 13	♦215	♦215	3	♦195	♦195	14
				1130	Florence.....Ill	♦212	♦212	1,2, 13	♦217	♦217	1,2, 13	♦215	♦215	3	♦195	♦195	14
				1138	Shannon.....Ill												
					ILLINOIS CENTRAL RAILROAD												
				3025	Hart.....Ill	♦202	♦202	1	♦207	♦207	1	....	....	...	....	....	...
⊙	8-2-42 (E585)	205 206	Change	3030	Colvin Park..Ill												
				3035	Irene.....Ill	♦202	♦202	1	♦207	♦207	1	....	....	...	....	....	...
				3040	Perryville...Ill												
				3045	Rockford.....Ill												
				3050	Alworth.....Ill												
				3055	Seward.....Ill	♦212	♦212	1	♦217	♦217	1	....	....	...	....	....	...
				3060	Evarts.....Ill												

FOLLOWING ROUTE NUMBERS SHOWN UNDER THE VARIOUS DELIVERING CARRIERS CORRESPOND WITH THOSE SHOWN ON PAGES 71 TO 305 OF TARIFF AND AS AMENDED

ROUTE NO.	Via ROUTES TO
	CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD (See Item 220A, Page 306 of tariff as amended)
21	Pennsylvania Railroad, North Judson, Ind., New York Central Railroad, and Ladd, Ill.
22	Pennsylvania Railroad, Decatur, Ill., Illinois Central Railroad, and Mendota, Ill.

⊙ 8-2-42 (E585) 310 Add

For explanation of abbreviations and reference marks, except as shown below, see pages 3, 4 and 65 of tariff and as amended.

⊙ Additions, cancellations and changes effected by this supplement.

♦ Increase.

♦ Reduction.

Rates and charges published in this supplement ARE HEREBY INCREASED as provided in Tariff of Increased Rates and Charges, No. X-148, Agent B. T. Jones' I. C. C. No. 3659, Baltimore and Ohio Railroad Agency No. 2188, supplements thereto or successive issues thereof.

Supplement No. 34
to
I. C. C. No. WL-10705
(Supplements Nos. 9, 14, 18, 27, ①28, 33 and 34 contain all changes)
(Supplement No. 22 under Postponement)
(Supplement No. 31—Postponement Notice)

The Baltimore and Ohio Railroad Company

(Sandusky, Willard, Stewartsville, Belpre, Ohio, and West)

IN CONNECTION WITH PARTICIPATING CARRIERS SHOWN ON PAGE 3 OF TARIFF, AS AMENDED

SUPPLEMENT No. 34

(Supplements Nos. 9, as amended, 14, as amended, 18, as amended, 27, as amended, ①28, 33 and 34 contain all changes)
(Supplement No. 22 under Postponement)
(Supplement No. 31—Postponement Notice)

TO

LOCAL, JOINT AND PROPORTIONAL FREIGHT TARIFF No. C. T. H 423-C

NAMING RATES ON

BITUMINOUS COAL, Carloads

(Description and Minimum Weight as provided on page 4 of Tariff)

FROM STATIONS ON THE

BALTIMORE AND OHIO RAILROAD

(In the State of Indiana, see page 4 of Tariff)

TO POINTS IN THE STATES OF

Illinois, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin and Wyoming, including Louisville, Ky.

①Special Supplement—Increase in rates and charges. (Ex Parte 148)

This tariff, as amended, contains rates that are higher for shorter than longer distances over the same route. Such departure from the terms of the amended fourth section of the Interstate Commerce Act is permitted by authority of Interstate Commerce Commission Fourth Section Orders as indicated on page 24 of tariff, as amended.

Issued June 30, 1932. **Effective August 2, 1942.**

Departure from the terms of Rule 9(e) of Tariff Circular No. 20, is authorized under permission of the Interstate Commerce Commission, No. 7920, of March 17, 1942.

O. S. LEWIS,
General Freight Traffic Manager,
Baltimore, Md.

G. M. CAMPBELL,
Coal Traffic Manager,
Baltimore, Md.

S. I. THOMPSON,
General Coal Freight Agent,
Baltimore, Md.

STAMP HERE

DATE RECEIVED

F. M. JORDAN,
General Coal Freight Agent,
Pittsburgh, Pa.

H. O. BIAS,
Coal Freight Agent,
Cincinnati, Ohio.

Issued by
A. M. SCHUBERT, Freight Tariff Agent,
500 Temple Bar Bldg., Court and Main Streets,
CINCINNATI, OHIO.

1100-B-3807.
(P. O. No. 19036-FES.)

(Files Tar. 2020, CD-600.)

(Made in U. S. A.)

2865

1619

Page 22 of Tariff—Amend: **EXPLANATION OF REFERENCE MARKS**

♦**Advance.** (A. S. No. C-1048, File CD-2607)
♦**Reduction.** (A. S. No. C-1048, File CD-2607)
§Issued in compliance with Order of the Interstate Commerce Commission in Docket 25419, as amended, and related cases of March 3, 1942.
(72)Applies only via Baltimore and Ohio Railroad, Decatur, Ill., Illinois Central Railroad, Mendota, Ill. and Chicago, Milwaukee, St. Paul and Pacific Railroad.
(73)Applies only via Routes shown on page 77 of tariff, as amended.
(74)**Cancel.** See Station No. 1090.

Amend Pages 30 to 43 of Tariff, as amended on Page 4 of Supplement No. 27:

RATES IN CENTS PER TON OF 2,000 POUNDS

For Commodity Description and Minimum Weights or Bituminous Coal Taking Columns A and B Rates, See Page 4 of Tariff

Station No.	To	From Stations in Groups (See Page 4 of Tariff) 1 Rate Column A	1 Rate Column B	2 Rate Column A	2 Rate Column B
	Chicago and North Western Railway				
90	Geneva Ill	(72)♦189			
95	La Fox Ill				
100	Elburn Ill	♦189			
105	Maple Park Ill				
110	Cortland Ill				
115	De Kalb Ill				
120	Malta Ill				
125	Creston Ill				
130	Rochelle Ill	♦189		♦219	
135	Flagg Ill				
140	Ashton Ill				
145	Franklin Grove Ill				
150	Nachusa Ill				
155	Dixon Ill	♦189		♦206	
160	Nelson Ill				
165	Sterling (Rock Falls) Ill				
265	Belvidere Ill				
270	Cherry Valley Ill				
275	Rockford Ill				
280	Winnebago Ill	♦212		♦229	
285	Pecatonica Ill				
290	Ridott Ill				
295	Freeport Ill				
315	St. Charles Ill	♦189			
420	Sycamore Ill	♦189		♦219	
4125	Roscoe Ill	♦227		♦239	
4130	Beloit Wis	§♦227		§♦244	

Station No.	To	From Stations in Groups (See Page 4 of Tariff) 1 Rate Column A	1 Rate Column B	2 Rate Column A	2 Rate Column B
	Chicago Great Western Railroad —Concluded				
90	Clare Ill				
95	Esmond Ill				
100	Lindenwood Ill				
105	Holcomb Ill				
110	Stillman Valley Ill	♦207		♦219	
115	Byron Ill				
120	Myrtle Ill				
125	Egan Ill				
130	German Valley Ill				
135	South Freeport Ill				
	Chicago, Milwaukee, St. Paul and Pacific Railroad				
550	Kirkland Ill	§♦190			
565	Davis Jct Ill				
570	Stillman Valley Ill				
575	Byron Ill				
580	Leaf River Ill				
585	Adeline Ill	♦200			
590	Forreston Ill				
595	Harper Ill				
665	Lanark Ill				
607	Fay Ill				
699	De Kalb Ill	♦189			
720	Camp Grant Ill	♦(74)			
725	Holcomb Ill				
730	Kings Ill	♦207			
735	Flag Center Ill				
740	Rochelle Ill	(73)§♦189 (73)♦207			

	Chicago Great Western Railroad								
50	St. Charles	Ill							
60	Wasco	Ill							
65	Lily Lake	Ill							
70	Virgil	Ill							
			♦189		♦201				
75	Richardson	Ill							
80	Sycamore	Ill							
82	De Kalb	Ill							
84	Five Points	Ill							
85	Wilkinson	Ill	♦195		♦207				
745	Steward Junction	Ill							
750	Scarboro	Ill	(72)♦185						
755	Roxbury	Ill	(73)♦207						
760	Welland	Ill							
765	Mendota	Ill							
775	Ladd	Ill							
790	Cherry	Ill							
805	Seatonville	Ill							
810	Howe	Ill							
825	Depue	Ill	(72)♦180						
			(73)♦207						
840	Moronts	Ill							
845	Granville	Ill							
860	Standard	Ill							
865	Cedar Point	Ill							
870	Oglesby	Ill							

(28) Will not apply for delivery at St. Charles School for Boys. Rates for delivery to St. Charles School for Boys will be the rates published herein to Geneva, Ill., plus $3.85 per car, as per Chicago and Northwestern Railway Tariff No. 8408-S, I. C. C. No. 10940, Ill. C. C. No. 870, supplements thereto or successive issues thereof. (A. S. Nos. C-440, C-847)

For explanation of other Reference Marks, see page 22 of tariff, as amended.

2866

1620

Amend Pages 43 to 53 of Tariff, as amended:

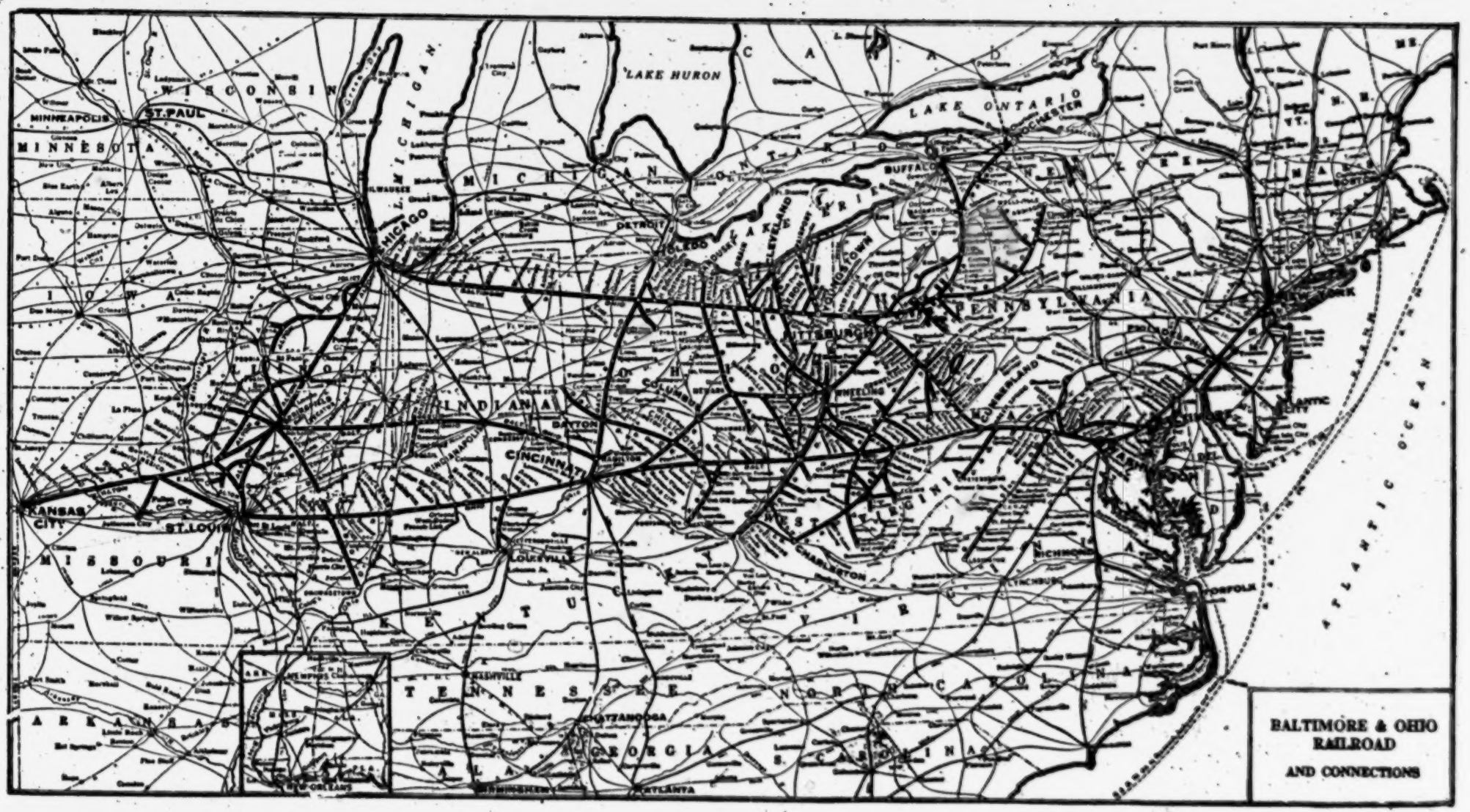
RATES IN CENTS PER TON OF 2,000 POUNDS

For Commodity Description and Minimum Weights of Bituminous Coal Taking Columns A and B Rates, See Page 4 of Tariff

Station No.	To	From Stations in Groups (See Page 4 of Tariff) 1 Rate Column A	1 Rate Column B	2 Rate Column A	2 Rate Column B
	Chicago, Milwaukee, St. Paul and Pacific Railroad —Concluded				
1020	Beloit ..... Wis	⊙§♦227			
1050	Rockton Ill	♦217			
1085	Rockford Ill	♦212			
1090	Camp Grant Ill				
1100	Shirland Ill				
1105	Durand Ill				
1110	Davis Ill	♦217			
1115	Rock City Ill				
1120	Dakota Ill				
1125	Freeport Ill				
1130	Florence Ill	♦212			
1135	Shannon Ill				
	Illinois Central Railroad				
3030	Colvin Park Ill				
3035	Irene Ill	♦202			
3040	Perryville Ill				
3045	Rockford Ill				
3050	Alworth Ill				
3055	Seward Ill	♦212			
3060	Evarts Ill				
3065	Freeport Ill				
3155	Forreston Ill	♦207			
3175	North Dixon Ill	♦189			
3180	Dixon Ill				
3515	Eleroy Ill	♦212			

⊙Applies only via Chicago, Milwaukee, St. Paul and Pacific Railroad through Davis Junction, Ill. (A. S. No. C-626)

For explanation of other Reference Marks, see page 22 of tariff, as amended.


WISCONSIN
MINNESOTA
MINNEAPOLIS
ST. PAUL
MICHIGAN
LAKE HURON
LAKE ONTARIO
CANADA
IOWA
ILLINOIS
INDIANA
OHIO
PENNSYLVANIA
NEW YORK
WEST VIRGINIA
VIRGINIA
KENTUCKY
TENNESSEE
NORTH CAROLINA
SOUTH CAROLINA
GEORGIA
ALABAMA
MISSISSIPPI
ARKANSAS
MISSOURI
CHICAGO
DETROIT
TOLEDO
CLEVELAND
BUFFALO
ROCHESTER
PITTSBURGH
WHEELING
CINCINNATI
DAYTON
COLUMBUS
INDIANAPOLIS
LOUISVILLE
KANSAS CITY
ST. LOUIS
NASHVILLE
CHATTANOOGA
MEMPHIS
NEW ORLEANS
BIRMINGHAM
ATLANTA
CHARLESTON
RICHMOND
NORFOLK
ATLANTIC OCEAN
BALTIMORE & OHIO RAILROAD
AND CONNECTIONS

2868

Subject to Tariff of Increased Rates and Charges No. X 148, Agent B T. Jones' I.C.C. No. 3659, Ill.C.C. No. 475, Ind.R.C. No. D 698, M.P.S.C. No. 633, Ohio No. 2015, supplements thereto or successive issues thereof.

The operation of portions of Tariff, as amended, referred to in Supplement No. 39, is suspended as provided in said supplement.

SUPPLEMENT No. 54
Cancels Supplement No. 53

To

Ill.C.C. No. 22
Ind.R.C. No. 28

M.P.S.C. No. 28
Ohio No. 42

I.C.C. No. 164

FREIGHT TARIFF No. 385

Supplements Nos. (41) 26, (42) 39, 42, 45, (43) 50, 51, 52 and 54 contain all changes from the original tariff that are effective on the date hereof.

NEW YORK CENTRAL SYSTEM

THE NEW YORK CENTRAL RAILROAD COMPANY

IN CONNECTION WITH

PARTICIPATING CARRIERS SHOWN ON PAGES 3 TO 5 OF TARIFF

Local Joint and Proportional Freight Tariff

NAMING RATES IN CENTS PER TON OF 2,000 POUNDS

ON

COAL, BITUMINOUS, AND COAL BRIQUETTES, BITUMINOUS

Carloads

FROM STATIONS ON	TO STATIONS IN		
NEW YORK CENTRAL RAILROAD (Cleveland, Cincinnati, Chicago and St. Louis District) and other Initial Carriers named on Page 3 of Tariff	ALABAMA	KENTUCKY	OHIO
	ARKANSAS	MICHIGAN	OKLAHOMA
	COLORADO	MINNESOTA	PENNSYLVANIA
	FLORIDA	MISSISSIPPI	SOUTH DAKOTA
	ILLINOIS	MISSOURI	TENNESSEE
	INDIANA	MONTANA	WISCONSIN
	IOWA	NEBRASKA	WYOMING
	KANSAS	NORTH DAKOTA	

ALSO

LOCAL DISTANCE RATES

As Named on Pages 323 and 324 of Tariff

(Applying on Bituminous and Anthracite Coal and Coal Briquettes)

ISSUED JULY 1, 1942

EFFECTIVE AUGUST 2, 1942
(Except as otherwise provided herein)

Departure from the terms of Rule 9(e) of Tariff Circular No. 20 is authorized under Permission of the Interstate Commerce Commission No. 7920 of March 17, 1942

(A1) Contains only matter under postponement.
(A2) Special Supplement (Blanket 56-S.O. 68)
(A3) Special Supplement Ex Parte 148

W. B. WOOD,
Coal Freight Agent,
CINCINNATI, OHIO

Issued by CHAS. COUGHLIN,
Chief of Tariff Bureau,
466 Lexington Avenue,
NEW YORK, N.Y.

(MV-4889-4-2900-CHC-MJP) (Printed in U.S.A.) (S.P. 7920-V180-29. N5 + 1)

1623

EXPLANATION OF REFERENCE MARKS

♦ Reduction ♦ Increase
+ Applies only on Intrastate traffic.
† Applies only on Interstate traffic.
(14) Coal consigned to St. Charles School for Boys is $3.85 per car over rates to Geneva, Ill.
(16) Published in connection with Order of the Interstate Commerce Commission in Docket 25419, dated July 20, 1933.
(17) Published in compliance with Order of the Interstate Commerce Commission dated March 3, 1942, in Docket 25419, et al.
(18) Terminal Rate. Does not apply at intermediate points and issued under authority of Illinois Railroad and Warehouse Commission Order 1139 Dated June 26, 1913 in conjunction with General Order No. 125 of the Illinois Commerce Commission Dated July 7, 1931 and in connection with Illinois Commerce Commission 40th Section Order No. 29 dated September 5, 1933 as amended by General Commodity Rate Increases 1937, Ex Parte 115.
(24) Rate will not apply to intermediate points. Authority Interstate Commerce Commission Fourth Section Order No. 11427, dated November 22, 1933.
53 Reissued from Sup. 53 effective July 2, 1942.

Index No.	TO STATION	Rates From Stations and Mines Shown on Pages 5 and 6 of Tariff Taking Groups: 1 Harrisburg L	1 Harrisburg F	2 Hillsboro L	2 Hillsboro F	3 Terre Haute L	3 Terre Haute F	4 Danville L	4 Danville F	5 Evansville L	5 Evansville F	6 E S & N L	6 E S & N F	7 Clay City L	7 Clay City F	8 Petersburg L	8 Petersburg F
	C&NW																
Pages 97 and 98 of Tariff. Change:																	
90	(14) Geneva....Ill.																
95	La Fox....Ill.																
100	Elburn....Ill.																
105	Maple Park....Ill.	♦205		♦175		♦189		♦185		♦219		221½		♦194		♦201	
110	Cortland....Ill.																
115	De Kalb....Ill.																
120	Malta....Ill.																
125	Creston....Ill.																
130	Rochelle....Ill.																
135	Flagg....Ill.																
140	Ashton....Ill.	♦205		♦175		♦189		♦185		♦232		♦234½		♦199		♦206	
145	Franklin Grove....Ill.																
150	Nachusa....Ill.																
155	Dixon....Ill.																
160	Nelson....Ill.																
165	Sterling (Rock Falls)....Ill.																
235	Gilberts....Ill.																
245	Huntley....Ill.																
250	Union....Ill.	♦ 225		♦195		197		♦ 195		227		229½		202		209	
255	Marengo....Ill.																
260	Garden Prairie....Ill.																
265	Belvidere....Ill.																
270	Cherry Valley....Ill.																
275	Rockford....Ill.																
280	Winnebago....Ill.	♦225		♦195		♦212		♦195		♦242		♦244½		♦217		♦224	
285	Pecatonica....Ill.																
290	Ridott....Ill.																
295	Freeport....Ill.																
315	St. Charles....Ill.	♦205		♦175		♦189		♦185		♦219		♦221½		♦194		♦201	
420	Sycamore....Ill.	♦205		♦175		♦189		♦185		♦219		♦221½		♦194		♦201	
Page 105 of Tariff. Change:																	
4125	Roscoe....Ill.	240		210		♦227		210		♦257		♦259½		♦232		♦239	
4130	Beloit....Wis.	(17) 240		(17) 210		(17) ♦227		(17) 210		(17) 257		(17) 259½		(17) 232		(17) 239	

4150	Beloit.....Wis.	(illegible)	(illegible)	(illegible)	(illegible)	(illegible)	(illegible)	(illegible)	(illegible)
	CB&Q								
Pages 120 and 121 of Tariff. Change:									
625	Rochelle.....Ill.	♦ (illegible) + 205	....	....	....	....	....	....	....
715	Rockford.....Ill.	♦ 225	....	....	....	....	....	....	....
775	Rock Falls.....Ill.	♦ (illegible) + 205	....	....	....	....	....	....	....
780	Sterling.....Ill.								
1565	Barstow.....Ill.	♦205	....	....	....	....	....	....	....
1570	Cleveland.....Ill.								
1580	Briar Bluff.....Ill.								
1585	Warner.....Ill.								
1590	Orion.....Ill.								
1595	Lynn.....Ill.								
1600	Ophiem.....Ill.								
1605	Henderson.....Ill.								
1610	Rio.....Ill.								
	CGW								
Page 134 of Tariff. Change:									
50	St. Charles.....Ill.	♦ 205	♦ 175	♦ 189	♦ 185	....	....	♦ 194	♦ 201

For Explanation of Abbreviations and Notes, see pages 71 and 74 of Tariff; Column Letters see Note 1 of Tariff; Reference Marks, see page 2 of this Supplement.

TO		Rates from Stations and Mines Shown on Pages 5 and 6 of Tariff Taking Groups													
		1 Harris-burg		2 Hills-boro		3 Terre Haute		4 Dan ville		5 Evans ville		6 E S & N		7 Clay City		8 Peters burg	
Index No	STATION	L	F	L	F	L	F	L	F	L	F	L	F	L	F	L	F
	CGW																
	Page 134 of Tariff Change																
60	Wasco Ill.																
65	Lily Lake Ill.																
70	Virgil Ill.	205		175		♦189		♦185						♦194		♦201	
75	Richardson Ill.																
80	Sycamore Ill.																
82	DeKalb Ill.	♦205		♦175		♦189		♦185						♦194		♦201	
84	Five Points Ill.	♦215		♦185		♦189		♦185						♦194		♦201	
85	Wilkinson Ill.	♦215		♦185		♦195		♦185						♦200		♦207	
90	Clare Ill.																
95	Esmond Ill.																
100	Lindenwood Ill.																
105	Holcomb Ill.																
110	Stillman Valley Ill.	♦220		♦190		♦207		♦190						♦212		♦219	
115	Byron Ill.																
120	Myrtle Ill.																
125	Egan Ill.																
130	German Valley Ill.																
135	South Freeport Ill.																
	CMStP&P																
	Page 140 of Tariff Change																
565	Davis Jct Ill.																
570	Stillman Valley Ind.	♦220		♦190		♦200		♦190		♦230		♦232½		♦205		♦212	
575	Byron Ill.																
	Page 140 of Tariff as amended by page 9 of Sup. 42 Change:																
580	Leaf River Ill.																
585	Adeline Ill.	♦220		♦190		♦200		♦190		♦230		♦232½		♦205		♦212	
	Page 140 and 141 of Tariff Change:																
590	Forreston Ill.	♦220		♦190		♦200		♦190		♦230		♦232½		♦205		♦212	
595	Harper Ill.																
605	Lanark Ill.	225		♦190		♦200		♦190		♦230		♦232½		♦205		♦212	
607	Fay Ill.																
696	Nickols Ill.																
697	Wilkinson Ill.	220		180		190		♦185		220		222½		195		202	
698	Bradt Ill.																
699	DeKalb Ill.	♦205		♦175		♦189		♦185		♦219		♦221½		189		♦201	
700	Chase Ill.																
701	Troxel Ill.	♦205		♦175		184		180		214		216½		189		196	
702	Duffin Ill.																
720	Camp Grant Ill.	♦225		♦195		♦212		♦195		♦242		♦244½		♦217		♦(4)237 ♦(4)224	
725	Holcomb Ill.																
730	Kings Ill.	♦220		♦190		♦207		♦190		♦237		♦239½		♦212		♦219	
735	Flag Center Ill.																
740	Rochelle Ill.	♦205		♦175		♦189		♦185		♦232		♦234½		♦199		♦206	
745	Steward Junction Ill.																
750	Scarboro Ill.																
756	Roxbury Ill.	♦205		♦175		♦185		♦185		♦232		♦234½		♦199		♦202	
760	Welland Ill.																

Page 142 of Tariff 53 Change:									
1005	Clinton Jct.	Wis.	(17) 279	(17) 249	(17) 249	(17) 249	(17) 299	(17) 301½	(17) 259	(17) 286
1010	Porters	Wis.								
1015	Morgan's Farm	Wis.	....	....	....	....	....	....	....	(17) 286
Page 142 of Tariff Change:									
1020	Beloit	Wis.	♦(17) 240	(17) 210	♦(17) 227	♦(17) 210	(17) 257	(17) 259½	♦(17) 232	♦(17) 239
1050	Rockton	Ill.								
1065	Roscoe Siding	Ill.	♦ 240	♦ 210	♦ 217	♦ 210	♦ 247	♦ 249½	♦ 222	♦ (47) 239 ♦ (45) 229
1070	Latham Park	Ill.								
1085	Rockford	Ill.	♦ 225	♦ 195	♦ 212	♦ 195	♦ 242	♦ 244½	♦ 217	♦ (47) 237 ♦ (45) 224

For Explanation of Abbreviations and Notes, see pages 71 to 74 of Tariff; Column Letters, See Note 1 of Tariff Reference Marks, see page 2 of this Supplement.

TO		Rates From Stations and Mines Shown on Pages 5 and 6 of Tariff Taking Groups													
		1 Harrisburg		2 Hillsboro		3 Terre Haute		4 Danville		5 Evansville		6 ES&N		7 Clay City		8 Petersburg	
Index No	STATION	L	F	L	F	L	F	L	F	L	F	L	F	L	F	L	F
	CMStP&P																
Page 142 of Tariff Change																	
1100	Shirland Ill																
1105	Durand Ill																
1110	Davis Ill	♦ 240		♦ 210		♦ 217		♦ 210		♦ 247		♦ 249½		♦ 222		♦ (47) 239 ♦ (49) 229	
1115	Rock City Ill																
1120	Dakota Ill																
1125	Freeport Ill	♦ 225		♦ 195		♦ 212		♦ 195		♦ 242		♦ 244½		♦ 217		♦ 224	
1130	Florence Ill																
1135	Shannon Ill	♦ 225		♦ 195		♦ 212		♦ 1 95		♦ 242		♦ 244½		♦ 217		♦ 224	
Page 142 of Tariff 53 Change																	
1235	Milton Jct Wis	(II) 283		(II) 253		(II) 253		(II) 253		(II) 303		(II) 305½		(II) 263		(II) 270	
Page 143 of Tariff 53 Change																	
1505	Janesville Wis	(II) 279		(II) 249		(II) 249		(II) 249		(II) 299		(II) 301½		(II) 259		(II) 266	
	IC																
Page 207 of Tariff Change																	
3025	Hart Ill																
3030	Colvin Park Ill																
3035	Irene Ill	♦ 225		♦ 185		♦ 202		♦ 195		....		....		♦ 207		♦ 214	
3040	Perryville Ill																
Page 207 of Tariff as amended by page 12 of Sup. 42 Change																	
3042	Rockford Ill	♦ 225		♦ 195		♦ 212		♦ 195		....		....		♦ 217		♦ 224	
Page 207 of Tariff Change																	
3050	Alworth Ill																
3055	Seward Ill	♦ 225		♦ 195		♦ 212		♦ 195		....		....		♦ 217		♦ 224	
3060	Evarts Ill																
Page 207 of Tariff as amended by page 12 of Sup. 42 Change																	
3065	Freeport Ill	♦ 225		♦ 195		♦ 212		♦ 195		....		....		♦ 217		♦ 224	
Page 207 of Tariff Change																	
3150	Baileyville Ill	♦ 225		♦ 195		♦ 212		♦ 212		....		....		♦ 217		♦ 224	
3155	Forreston Ill																
3160	Haldane Ill																
3165	Polo Ill	♦ 220		♦ 190		♦ 207		♦ 207		....		....		♦ 212		♦ 219	
3170	Woosung Ill																
3175	North Dixon Ill	♦ 205		♦ 175		♦ 189		♦ 189		....		....		♦ 199		♦ 206	
3180	Dixon Ill	♦ 205		♦ 175		♦ 189		♦ 189		....		....		♦ 199		♦ 206	
3185	Eldena Ill																
3190	Amboy Ill	♦ 205		♦ 175		♦ 189		....		....		....		♦ 199		♦ 206	
3515	Elroy Ill	238		♦ 208 + 203		♦ 212		♦ 208 + 203		....		....		218		225	

For Explanation of Abbreviations and Notes, see pages 71 to 74 of Tariff; Column Letters, see Note 1 of Tariff; Reference Marks, see page 2 of this Supplement.

SUBJECT TO TARIFF OF INCREASED RATES AND CHARGES No. X-148, AGENT B. T. JONES' I. C. C. No. 3659, ILL. C. C. No. 475, IND. R. C. No. D-693, M. P. S. C. No. 633, OHIO No. 2015, SUPPLEMENTS THERETO OR SUCCESSIVE ISSUES THEREOF.

THE OPERATION OF PORTIONS OF TARIFF, AS AMENDED, REFERRED TO IN SUPPLEMENT No. 39, IS SUSPENDED AS PROVIDED IN SAID SUPPLEMENT.

SUPPLEMENT No. 56

Cancels Supplements Nos. 51, 52 and 54.

TO

Ill. C. C. No. 22 | **M. P. S. C. No. 28** | **I. C. C. No. 164**

Ind. R. C. No. 28 | **Ohio No. 42**

FREIGHT TARIFF No. 385

Supplements Nos. (A)26, (A)39, 42, 45, (A)50, 55 and 56 contain all changes from the original tariff that are effective on the date hereof.

NEW YORK CENTRAL SYSTEM

THE NEW YORK CENTRAL RAILROAD COMPANY

IN CONNECTION WITH

PARTICIPATING CARRIERS SHOWN ON PAGES 3 TO 5 OF TARIFF

LOCAL, JOINT AND PROPORTIONAL FREIGHT TARIFF

NAMING RATES IN CENTS PER TON OF 2,000 POUNDS

ON

Coal, Bituminous, and Coal Briquettes, Bituminous

CARLOADS

FROM STATIONS ON	TO STATIONS IN		
NEW YORK CENTRAL RAILROAD (Cleveland, Cincinnati, Chicago and St. Louis District) And Other Initial Carriers Named on Page 3 of Tariff	ALABAMA ARKANSAS COLORADO FLORIDA ILLINOIS INDIANA IOWA KANSAS	KENTUCKY MICHIGAN MINNESOTA MISSISSIPPI MISSOURI MONTANA NEBRASKA NORTH DAKOTA	OHIO OKLAHOMA PENNSYLVANIA SOUTH DAKOTA TENNESSEE WISCONSIN WYOMING

ALSO

LOCAL DISTANCE RATES

AS NAMED ON PAGES 223 AND 224 OF TARIFF

(Applying on Bituminous and Anthracite Coal and Coal Briquettes)

ISSUED JULY 9, 1942

EFFECTIVE AUGUST 10, 1942
(Except as otherwise provided herein.)

(40) Contains only matter under postponement.
(42) Special Supplement (Blanket 56-S. O. 68).
(43) Special Supplement Ex Parte 148.

H. B. WOOD,
Coal Freight Agent,
Cincinnati, Ohio.

(E-4931-2900-B. L. K.)

Issued by
CHAS. COUGHLIN,
Chief of Tariff Bureau,
466 Lexington Avenue,
NEW YORK, N. Y.

(S. P. 7920—V180-29, N5+1)

RECEIVED		
Month	Day	Year

PRINTED IN U. S. A.

2873

1927

(58)The effective date of Supplement No. 26 is hereby further postponed until November 9, 1942.
Pending restoration, reissue or cancellation of the matter under postponement, rates named in tariff, as amended, will apply.

PARTICIPATING CARRIERS.

List of Participating Carriers is as shown in Tariff, except:

Abbreviations	CARRIER	CONCURRENCES					
		I. C. C.		Ill. C. C.		Ind. R. C.	
		FX	No.	FX	No.	FI	No.
	Intermediate and Terminal						
S&SW	(58)Springfield & Southwestern Railroad Company	(116)5	74	(116)5	28		

ALPHABETICAL LIST OF STATIONS TO WHICH RATES APPLY.

The Index Numbers of Stations in this Supplement correspond with the Index Numbers of the same stations shown on pages 6 to 71, inclusive, of the Tariff, with the following additions and exceptions:

STATION	Road	Index No.	STATION	Road	Index No.	STATION	Road	Index No.
⊙Coatea.....Minn.	CGW	805	Jeffersonville.....Ind.	B&O	13785	Rosemont (Gopher Ordnance Works).....Minn.	CGW	805
						Stringer.....Ark.	StLSW	762

EXPLANATION OF REFERENCE MARKS.

♦ Reduction. ⊙ Cancel.
▲ Change in wording which results in neither increases nor reduction in charges.
✦ Applies only on Intrastate Traffic. † Applies only on Interstate Traffic.
ƒ For routing from mines on ES&N, see page 325 of Tariff, as amended.
(A) Effective August 15, 1942.
(3) Rate from Pana, Ill., will be 10 cents per ton of 2,000 pounds in excess of rate shown.
(8) Issued in compliance with order of the Interstate Commerce Commission in Docket No. 23922, dated January 24, 1933, amended March 29, 1933.
(14) Coal consigned to St. Charles School for Boys is $3.85 per car over rates to Geneva, Ill.
(47) Applies only from stations on the A. W. & W.
(48) Will not apply from stations on the A. W. & W.
(25) Applies on Bituminous Coal which has been passed through a bar screen not exceeding one and one-half (1½) inches between bars, or its equivalent, a two (2) inch mesh or two (2) inch round perforation; with the following exception: Will not apply on sizes of Coal commonly known as No. 2 Nut, No. 3 Nut or No. 4 Nut, mixtures therefrom which are nut sizes, but from which carbon or No. 5 Coal has been removed.
(26) Applies only on size of coal commonly known as No. 2 Nut. No. 3 Nut, or No. 4 Nut, or mixtures therefrom, which are nut sizes, but from which the carbon or No. 5 Coal has been re moved.
(29) Published to meet Gas Pipe Line competition.
(114) Issued by the Chicago, Springfield & St. Louis Railway Company (Elmer Nafziger, Receiver)
(115) Cancel. Account rates obsolete. Combination rates will apply.
(116) Cancel. Account located within Bay City, Mich. switching limits.
(117) Published in compliance with order of the Interstate Commerce Commission dated March 3, 1942, in Docket 25419, et al.
(118) Terminal Rate. Does not apply at intermediate points and issued under authority of Illinois Railroad and Warehouse Commission Order 1139 Dated June 26, 1913 in conjunction with General Order No. 125 of the Illinois Commerce Commission Dated July 7, 1931 and in connection with Illinois Commerce Commission 40th Section Order No. 29 dated September 5, 1933 as amended by General Commodity Rate increases 1937, Ex Parte 115.
(11) Authority Interstate Commerce Commission, Fourth Section Order No. 12207, dated January 23, 1936.
(13) Published under authority of Interstate Commerce Commission's Fourth Section Order No. 11242.
(42) See Note 15 of Tariff, as amended.
(43) See Note 18 of Tariff, as amended.
(46A) Reissued from Supplement No. 46, effective April 16, 1942.
(48) Reissued from Supplement No. 48.
(49) Reissued from Supplement No. 49, effective June 15, 1942.
(51) Reissued from Supplement No. 51, effective July 2, 1942.
(52) Reissued from Supplement No. 52, effective July 12, 1942.
(53) Reissued from Supplement No. 53, effective July 2, 1942.
(54) Reissued from Supplement No. 54, effective August 2, 1942.

EXPLANATION OF NOTES.

Note 16. Cancels Note 16, page 74 of Tariff, as amended by page 4 of Sup. 42. Expires with December 31, 1942, unless sooner cancelled, changed or extended

Note 19. Cancels Note 19, page 74 of Tariff, as amended by page 4 of Sup. 42. Effective January 1, 1943, unless sooner cancelled, changed or postponed.

For Explanation of Abbreviations and Notes, see pages 71 to 74 of Tariff; Column Letters, see Note 1 of Tariff; Reference Marks, see page 2 of this Supplement.

52 **Rule No. 15. Cancels Rule No. 15, page 75 of Tariff, as amended by page 2 of Sup. 49.**

APPLICATION OF RATES FROM AYRSHIRE MINE No. 8, IND., BRYANT, IND., CANAL, IND., CATO, IND., ENOSVILLE, IND., GLOBE, IND., AND MUREN, IND., ON THE ALGERS, WINSLOW AND WESTERN RAILWAY.

Rates published from Group No. 8, to stations on the following named carriers, viz.:

AT&SF stations, viz.:
Index Nos. 25 to 55.
B&O stations, viz.:
Index Nos. 13220, 13515 to 13550, 15560 to 15725.
CR&IC when via IC only.
C&O.
C&EI.
C&NW stations, viz.:
Index Nos. 355, 360, 650 to 730, 1175 to 1220, 4125 to 4180, 4815, 4820, when via AW&W, Oakland City Jct., Ind., NYC(C)—Danville, Ill., NYC(W)—Chicago, Ill. and C&NW or AW&W—Oakland City Jct., Ind., NYC(C)—Danville, Ill., NYC(W)—Hartsdale, Ind., EJ&E.
CG&W and Short Line Connections, viz.:
DM&CI.
FDDM&S.
M&On.
MD&CL.
MN&S.
WCF&N.
When via CGW.
CMStP&P stations, viz.:
Index Nos. 1005 to 1015.
Index Nos. 1020, 1050 to 1070, 1085, 1235 to 1255, 1505, 1510, when via AW&W—Oakland City Jct., Ind., NYC(C)—Danville, Ill., NYC(W)—Chicago, Ill., or AW&W—Oakland City Jct., Ind., NYC(C)—Danville, Ill., NYC(W)—Hartsdale, Ind., EJ&E.;
IC.
IllT stations, viz.:
Index Nos. 960 to 1315.
IHB.
M&StL and Short Line Connections, viz.:
DM&CI.
FDDM&S, MC&CL when via M&StL.
NYC(C).
NYC(K).
NYC(M).
NYC(W).
NYC&StL in Illinois.
PRR.
Wab.
WCF&N, when via IC.
WRR.

will also apply from:

Ayrshire Mine No. 8, Ind., Bryant, Ind., Canal, Ind., Cato, Ind., Enosville, Ind., Globe, Ind., and Muren, Ind., on the Algers, Winslow and Western Railway.

Rule No. 55 Cancels Rule No. 55, page 76 of Tariff, as amended by page 5 of Sup. 42.

MINIMUM WEIGHT.

(a) On Bituminous Coal loaded in open-top cars, minimum weight will be the marked capacity of car loaded, except that when car is loaded to full visible capacity, actual weight of coal will be the minimum weight.

(b) On Bituminous Coal loaded in box or stock cars, with marked capacity of 80,000 pounds or less, the minimum weight will be 60,000 pounds; in cars of marked capacity over 80,000 pounds, the minimum weight will be 80,000 pounds.

See the Official Railway Equipment Register I. C. C.-R. E. R. No. 264, Ind. R. C.-R. E. R. No. 264, Ill. C. C.-R. E. R. No. 264, M. P. S. C.-R. E. R. No. 264, issued by Agent M. A. Zenobia, or subsequent issues for list of car numbers, marked capacity, dimensions and cubical capacity of freight cars used to transport freight.

TO		Rates From Stations and Mines Shown on Pages 5 and 6 of Tariff Taking Groups															
		1 Harrisburg		2 Hillsboro		3 Terre Haute		4 Danville		5 Evansville		6 ES&N		7 Clay City		8 Petersburg	
Index No.	STATION	L	F	L	F	L	F	L	F	L	F	L	F	L	F	L	F
	--AT&SF																
Page 86 of Tariff. Ⓐ Change:																	
1300	Pauline.....Kan.	♣349	360	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	B&O																
Page 92 of Tariff. ⓜ Add:																	
13785	Jeffersonville.....Ind.		231	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Page 92 of Tariff. ⓜ Change:																	
15545	Dana.....Ind.		183		169	.....	.....		100	.....	.....	.....	.....	.....	.....	.....	.....
15560	Raven.....Ill.		183		169		ⓑ90		100	.....	.....	.....	.....		ⓑ116		ⓑ155
15565	Scotland.....Ill.																

For Explanation of Abbreviations and Notes, see pages 71 to 74 of Tariff; Column Letters, see Note 1 of Tariff; Reference Marks, see page 2 of this Supplement.

TO		Rates From Stations and Mines Shown on Pages 5 and 6 of Tariff Taking Groups													
		1 Harrisburg		2 Hillsboro		3 Terre Haute		4 Danville		5 Evansville		6 ES&N		7 Clay City		8 Petersburg	
Index No.	STATION	L	F	L	F	L	F	L	F	L	F	L	F	L	F	L	F
	C&NW																
Pages	**97 and 98 of Tariff. [54]Change:**																
90	(10)Geneva.....Ill.																
95	La Fox.....Ill.																
100	Elburn.....Ill.																
105	Maple Park.....Ill.		205		175		189		185		219		221½		194		201
110	Cortland.....Ill.																
115	De Kalb.....Ill.																
120	Malta.....Ill.																
125	Creston.....Ill.																
130	Rochelle.....Ill.																
135	Flagg.....Ill.																
140	Ashton.....Ill.		205		175		189		185		232		234½		199		206
145	Franklin Grove.....Ill.																
150	Nachusa.....Ill.																
155	Dixon.....Ill.																
160	Nelson.....Ill.																
165	Sterling (Rock Falls)Ill.																
235	Gilberts.....Ill.																
245	Huntley.....Ill.																
250	Union.....Ill.		225		195		197		195		227		229½		202		209
255	Marengo.....Ill.																
260	Garden Prairie.....Ill.																
265	Belvidere.....Ill.																
270	Cherry Valley.....Ill.																
275	Rockford.....Ill.																
280	Winnebago.....Ill.		225		195		212		195		242		244½		217		224
285	Pecatonica.....Ill.																
290	Ridott.....Ill.																
295	Freeport.....Ill.																
315	St. Charles.....Ill.		205		175		189		185		219		221½		194		201
420	Sycamore.....Ill.		205		175		189		185		219		221½		194		201
Page 9	**9 of Tariff. [51]Change:**																
720	Clinton Jct.....Wis.																
725	Tiffany.....Wis.		(11)279		(11)249		(11)249		(11)249		(11)299		(11)301½		(11)259		(11)266
730	Janesville.....Wis.																
Page 1	**00 of Tariff. Change:**																
1220	Milton Jct.....Wis.																
1225	Koshkonong.....Wis.		(11)283		(11)253		(11)253		(11)253		(11)303		(11)305½		(11)263		(11)270
1230	Ft. Atkinson.....Wis.																
Page 1	**05 of Tariff. [54]Change:**																
4125	Roscoe.....Ill.		240		210		227		210		257		259½		232		239
4130	Beloit.....Wis.		(11)240		(11)210		(11)227		(11)210		(11)257		(11)259½		(11)232		(11)239
Page 1	**06 of Tariff. [51]Change:**																
4135	Afton.....Wis.		(11)279		(11)249		(11)249		(11)249		(11)299		(11)301½		(11)259		(11)266

Page 1	CA&E 20 of Tariff. [illegible] Change:								
85	Geneva Jct. ..... Ill.	(115)	(115)	(115)	(115)	(115)	(115)	(115)	(115)
Page 1	CB&Q 20 of Tariff. [illegible] Change:								
625	Rochelle ..... Ill.	(115)+205							
715	Rockford ..... Ill.	225							
775	Rock Falls ..... Ill.	(115)+205							
780	Sterling ..... Ill.								

For Explanation of Abbreviations and Notes, see pages 71 to 74 of Tariff; Column Letters, see Note 1 of Tariff; Reference Marks, see page 2 of this Supplement.

TO		Rates From Stations and Mines Shown on Pages 5 and 6 of Tariff Taking Groups															
		1 Harrisburg		2 Hillsboro		3 Terre Haute		4 Danville		5 Evansville		6 ES&N		7 Clay City		8 Petersburg	
Index No.	STATION	L	F	L	F	L	F	L	F	L	F	L	F	L	F	L	F
	CB&Q—(Con.)																
Page 121 of Tariff. ✉Change:		—(Con.)															
1565	Barstow.....Ill.																
1570	Cleveland.....Ill.																
1580	Briar Bluff.....Ill.																
1585	Warner.....Ill.																
1590	Orion.....Ill.	205															
1595	Lynn.....Ill.																
1600	Ophiem.....Ill.																
1605	Henderson.....Ill.																
1610	Rio.....Ill.																
Page 126 of Tariff. ✉Change:																	
4875	Cameron.....Mo.	319		③279													
4880	Cameron Jct.....Mo.																
4925	Keystone.....Mo.	319		③279													
4930	Turney.....Mo.																
4935	Lathrop.....Mo.																
4940	Holt.....Mo.	330		③290													
4945	Kearney.....Mo.																
4950	Chandler.....Mo.																
4955	Liberty.....Mo.																
Page 128 of Tariff, as amended by page 3 of Sup. 52. Change:																	
6555	Palmyra.....Neb.																
6560	Bennett.....Neb.	395		365	329												
6565	Cheneya.....Neb.																
6570	Collegeview.....Neb.																
Pages 131 to 133 of Tariff. Change:																	
7815	Woodlawn.....Neb.	♣395	♣359	♣365	♣329												
7886	Burkett.....Neb.	♣455	♣455	♣420	♣420												
7890	Abbott.....Neb.	♣455	♣455	♣420	♣420												
9390	Huntsman.....Neb.	♣662	♣662	♣627	♣627												
	CGW																
Page 134 of Tariff. ✉Change:																	
50	St. Charles.....Ill.																
60	Wasco.....Ill.																
65	Lily Lake.....Ill.	205		175		189		185						194		201	
70	Virgil.....Ill.																
75	Richardson.....Ill.																
80	Sycamore.....Ill.	205		175		189		185						194		201	
82	DeKalb.....Ill.																
84	Five Points.....Ill.	215		185		189		185						194		201	
85	Wilkinson.....Ill.	215		185		195		185						200		207	

90	Clare.....Ill.																		
95	Esmond.....Ill.																		
100	Lindenwood.....Ill.																		
105	Holcomb.....Ill.																		
110	Stillman Valley.....Ill.		220		190		207		190						212		219		
115	Byron.....Ill.																		
120	Myrtle.....Ill.																		
125	Egan.....Ill.																		
130	German Valley.....Ill.																		
135	South Freeport.....Ill.																		
Page 136 of Tariff. ▣Change:																			
805	Rosemont (Gopher Ordnance Works) (Formerly Coates).....Minn.	390	371	360	341	360	341	360	341						370	351	377	358	

For Explanation of Abbreviations and Notes, see pages 71 to 74 of Tariff; Column Letters, see Note 1 of Tariff; Reference Marks, see page 2 of this Supplement.

Index No.	TO STATION	Rates From Stations and Mines Shown on Pages 5 and 6 of Tariff Taking Groups													
		1 Harrisburg		2 Hillsboro		3 Terre Haute		4 Danville		5 Evansville		6 ES&N		7 Clay City		8 Petersburg	
		L	F	L	F	L	F	L	F	L	F	L	F	L	F	L	F
	CMStP&P																
Page 140 of Tariff. (54) Change:																	
565	Davis Jct.....Ill.																
570	Stillman Valley.....Ill.	220		190		200		190		230		232½		205		212	
575	Byron.....Ill.																
Page 140 of Tariff, as amended by page 9 of Sup. 42. (54) Change:																	
580	Leaf River.....Ill.	220		190		200		190		230		232½		205		212	
585	Adeline.....Ill.																
Pages 140 and 141 of Tariff. (54) Change:																	
590	Forreston.....Ill.	220		190		200		190		230		232½		205		212	
595	Harper.....Ill.																
605	Lanark.....Ill.	225		190		200		190		230		232½		205		212	
607	Fay.....Ill.																
696	Nickols.....Ill.																
697	Wilkinson.....Ill.	220		180		190		185		220		222½		195		202	
698	Bradt.....Ill.																
699	DeKalb.....Ill.	205		175		189		185		219		221½		189		201	
700	Chase.....Ill.																
701	Troxel.....Ill.	205		175		184		180		214		216½		189		196	
702	Duffin.....Ill.																
720	Camp Grant.....Ill.	225		195		212		195		242		244½		217		(67)237 (68)224	
725	Holcomb.....Ill.																
730	Kings.....Ill.	220		190		207		190		237		239½		212		219	
735	Flag Center.....Ill.																
740	Rochelle.....Ill.	205		175		189		185		232		234½		199		206	
745	Steward Junction.....Ill.																
750	Scarboro.....Ill.																
755	Roxbury.....Ill.	205		175		185		185		232		234½		199		202	
760	Welland.....Ill.																
Page 142 of Tariff. (22) Change:																	
1005	Clinton Jct.....Wis.	(117)279		(117)249		(117)249		(117)249		(117)299		(117)301½		(117)259		(117)266	
1010	Porters.....Wis.																
1015	Morgan's Farm.....Wis.															(117)266	
Page 142 of Tariff. (54) Change:																	
1020	Beloit.....Wis.	(117)240		(117)210		(117)227		(117)210		(117)257		(117)259½		(117)232		(117)239	
1050	Rockton.....Ill.																
1065	Roscoe Siding.....Ill.	240		210		217		210		247		249½		222		(67)239 (68)229	
1070	Latham Park.....Ill.																
1085	Rockford.....Ill.	225		195		212		195		242		244½		217		(67)237 (68)224	

									(a)224
1100 1105 1110 1115 1120	Shirland.....Ill. Durand.....Ill. Davis.....Ill. Rock City.....Ill. Dakota.....Ill.	240	210	217	210	247	249½	222	(a)239 (a)229
1125	Freeport.....Ill.	225	195	212	195	242	244½	217	224
1130 1135	Florence.....Ill. Shannon.....Ill.	225	195	212	195	242	244½	217	224
Page 142 of Tariff. [a] **Change**									
1235	Milton Jct.....Wis.	(11)283	(11)253	(11)253	(11)253	(11)303	(11)305½	(11)263	(11)270
Page 143 of Tariff. [88] **Change:**									
1505	Janesville.....Wis.	(11)279	(11)249	(11)249	(11)249	(11)299	(11)301½	(11)259	(11)266

For Explanation of Abbreviations and Notes, see pages 71 to 74 of Tariff; Column Letters, see Note 1 of Tariff; Reference Marks, see page 2 of this Supplement.

TO		Rates From Stations and Mines Shown on Pages 5 and 6 of Tariff Taking Groups:															
		1 Harrisburg		2 Hillsboro		3 Terre Haute		4 Danville		5 Evansville		6 ES&N		7 Clay City		8 Petersburg	
Index No.	STATION	L	F	L	F	L	F	L	F	L	F	L	F	L	F	L	F
	CMStP&P																
Page 147 of Tariff, as amended		**by page 9 of Sup. 42. [40A] Change:**															
4490	Dubuque.....Iowa	289	(F2) 245 (N1) 261	254	(F2) 210 (N1) 226	259	(F2) 215 (N1) 231	259	(F2) 215 (N1) 231	.....	.....	.....	.....	269	(F2) 255 (N1) 241	276	(F2) 232 (N1) 248
Page 148 of Tariff. [48] Change:																	
4910	Fordson.....Minn.		(F12) (54)(54)		(F12) (54)(54)		(F12) (54)(54)		(F12) (54)(54)						(F12) (54)(54)		(F12) (54)(54)
4915	Merriam Park.....Minn.	390	331 (58)371	360	301 (58)341	360	301 (58)341	360	301 (58)341	.....	.....	.....	.....	370	311 (58)351	377	318 (58)358
Page 155 of Tariff. [48] Change:																	
7250	Minnehaha.....Minn.	390	(F12) (54)(54) 331 (58)371	360	(F12) (54)(54) 301 (58)341	360	(F12) (54)(54) 301 (58)341	360	(F12) (54)(54) 301 (58)341	.....	.....	.....	.....	370	(F12) (54)(54) 311 (58)351	377	(F12) (54)(54) 318 (58)358
Page 160 of Tariff, as amended		**by page 3 of Sup. 45. [52] Change:**															
9493	Dana.....Ind.		183		169	.....			100	.....	.....	.....	.....	.....	.....	.....	.....
	IC																
Page 207 of Tariff. [54] Change:																	
3025	Hart.....Ill.																
3030	Colvin Park.....Ill.																
3035	Irene.....Ill.		225		185		202		195	.....	.....	.....	.....		207		214
3040	Perryville.....Ill.																
Page 207 of Tariff, as amended		**by page 12 of Sup. 42. [54] Change**															
3042	Rockford.....Ill.		225		195		212		195	.....	.....	.....	.....		217		224
Page 207 of Tariff. [54] Change:																	
3050	Alworth.....Ill.																
3055	Seward.....Ill.		225		195		212		195	.....	.....	.....	.....		217		224
3060	Evarts.....Ill.																
Page 207 of Tariff, as amended		**by page 12 of Sup. 42. [54] Change.**															
3065	Freeport.....Ill.		225		195		212		195	.....	.....	.....	.....		217		224
Page 207 of Tariff. [54] Change.																	
3150	Baileyville.....Ill.		225		195		212		212	.....	.....	.....	.....		217		224
3155	Forreston.....Ill.																
3160	Haldane.....Ill.		220		190		207		207	.....	.....	.....	.....		212		219
3165	Polo.....Ill.																
3170	Woosung.....Ill.																
3175	North Dixon.....Ill.		205		175		189		189	.....	.....	.....	.....		199		206
3180	Dixon.....Ill.		205		175		189		189	.....	.....	.....	.....		199		206
3185	Eldena.....Ill.		205		175		189		.....	.....	.....	.....	.....		199		206
3190	Amboy.....Ill.																
3515	Eleroy.....Ill.		238		†208 ↔203		212		†208 ↔203	.....	.....	.....	.....		218		225

	NYC(W)								
Page 247 of Tariff.	**Change.**								
6095	Middlebury.....Ind.								
6100	Shipshewana.....Ind.	282	252	.....	242	.....	.....	.....	.....
6105	Seyberta.....Ind.								
	NYC(M)								
Page 250 of Tariff.	**Change.**								
11270	Willow Run (formerly Wiard).....Mich.	320	292	285	282	320	322½	295	302
Page 252 of Tariff.	**Change.**								
12590	Kawkawlin.....Mich.	(11¢)	(11¢)	(11¢)	(11¢)	(11¢)	(11¢)	(11¢)	(11¢)

For Explanation of Abbreviations and Notes, see pages 71 to 74 of Tariff; Column Letters, see Note 1 of Tariff; Reference Marks, see page 2 of this Supplement.

TO		Rates From Stations and Mines Shown on Pages 5 and 6 of Tariff Taking Groups:															
		1 Harrisburg		2 Hillsboro		3 Terre Haute		4 Danville		5 Evansville		6 ES&N		7 Clay City		8 Petersburg	
Index No.	STATION	L	F	L	F	L	F	L	F	L	F	L	F	L	F	L	F
	NYC(M)																
Page 2	53 of Tariff. ⊞Change.																
14855	Terre Haute.....Ind.																
14865	St. Mary of the Woods.....Ind.		174		169				100								
14870	Sandford.....Ind.																
14875	Vermillion.....Ill.		156		145		⑤ (1)90		100		174				⑤ (1)97		⑤ (1)149
	StLSW																
Page 2	89 of Tariff. δAdd.																
762	Stringer.....Ark.		245														

ROUTING (Origin Groups and destination Index Numbers are those used with the rates).

TO Station Index Numbers	ROUTE NUMBERS FROM ORIGIN GROUPS						
	Group 1 Harrisburg	Group 2 Hillsboro	Group 3 Terre Haute	Group 4 Danville	Groups 5, δ6 Evansville	Group 7 Clay City	Group 8 Petersburg
B&O							
Page 327 of Tariff. ⊞Add:							
13785	5						
MN&S							
Page 337 of Tariff. Change:							
215	2 to 5, 8, δ9	2 to 5, δ9	2 to 5, 8, δ9	2 to 5, 8, δ9		2 to 5, 8, δ9	2 to 5, 8, δ9
StLSW							
Page 343 of Tariff. Change:							
20 to 760	1, 2, 3						
762	δ4						
765 to 1555	1, 2, 3						

EXPLANATION OF ROUTE NUMBERS.

Route numbers explained under the various delivering lines correspond with the same delivering line named in connection with the rate.

Route Nos.	ROUTE VIA
Page 357	StLSW
4	of Tariff. Add: NYC(C)—Karnak, Ill., C&EI—Chaffee, Mo., StLSF—Blytheville, Ark., and StLSW.

For Explanation of Abbreviations and Notes, see pages 71 to 74 of Tariff; Column Letters, see Note 1 of Tariff; Reference Marks, see page 2 of this Supplement.

Subject to Tariff of Increased Rates and Charges No. X-148, Agent L. E. Kipp's I. C. C. No. A-3386, Ill. C. C. No. 311, I. R. C. No. A-169, M. R. C. No. 295, supplements thereto or successive issues thereof.

(3400) This Supplement is subject to the provisions of Supplement No. 2 (Service Order 68).

Supplement No. 10 to
M. R. C. No. 187
Supplements Nos. ①2, 3, ②4, 8, 9 and 10 contain all changes from the original tariff effective on the date hereof.

Supplement No. 10 to
I. R. C. No. E-129
Supplements Nos. ①2, 3, ②4, 8, 9 and 10 contain all changes from the original tariff effective on the date hereof.

Supplement No. 11 to
Ill. C. C. No. E-316
Supplements Nos. ①2, 3, ③4, 8, 9, ③10 and 11 contain all changes from the original tariff effective on the date hereof.

Supplement No. 10 to
I. C. C. No. E-1802
Supplements Nos. ①2, 3, ②4, 8, 9 and 10 contain all changes from the original tariff effective on the date hereof.

Illinois Central Railroad Company

—IN CONNECTION WITH—

PARTICIPATING CARRIERS AS SHOWN IN TARIFF AND EFFECTIVE SUPPLEMENTS

Stamp here date received

SUPPLEMENT No. 11 TO
I. C. R. R. COAL TARIFF No. 3100-H

Supplements Nos. ①2, 3, ②4, 8, 9, ③10 and 11 contain all changes from the original tariff effective on the date hereof.

See page 2 for Individual Lines' Tariff Numbers

SUPPLEMENT TO

FREIGHT TARIFF

—OF—

LOCAL, JOINT AND PROPORTIONAL RATES

—APPLYING ON—

Anthracite Coal, Bituminous Coal, Carbonized Bituminous Coal, and Bituminous Coal Briquettes, Carloads and Less Carloads

FROM	TO
Mines and Stations in States of ALABAMA ILLINOIS INDIANA IOWA KENTUCKY WISCONSIN Also ST. LOUIS, MO. Shown on pages 6 to 9, inclusive, of tariff, as amended.	Stations in States of COLORADO ILLINOIS INDIANA IOWA KANSAS MICHIGAN MINNESOTA MISSOURI MONTANA NEBRASKA NORTH DAKOTA SOUTH DAKOTA WISCONSIN WYOMING On ILLINOIS CENTRAL R. R. AND CONNECTIONS

ALSO DISTANCE RATES

Between stations on Illinois Central R. R. in States of Illinois, Indiana, Iowa, Minnesota, South Dakota and Wisconsin, shown in Section No. 4, pages 383 to 391, inclusive, of tariff.

Governed by Classifications, Exceptions thereto and Rules Circular referred to in Rules 1 and 10 of tariff.

ISSUED JUNE 30, 1942 — **EFFECTIVE AUGUST 2, 1942**

①Special Supplement (Service Order No. 68).
②Special Supplement of Increased Rates (Ex Parte 148)
③Illinois intrastate supplement issued under Illinois Commerce Commission Docket 30838 of June 11, 1942. (Suspension of minimum weights in box or stock cars.)

Issued by
W. L. REEVES,
General Freight Agent,
135 East Eleventh Place,
CHICAGO, ILL.

J. L. SHEPPARD,
Freight Traffic Manager,
CHICAGO, ILL.

R. A. TROVILLION,
Assistant Freight Traffic Manager,
CHICAGO, ILL.

N. L. RICHMOND,
Coal Traffic Manager,
CHICAGO, ILL.

(496)

Amends tariff as follows: Pages 109 to 371, inclusive, and page 2 of Supplement No. 9.
The rates shown below cancel rates from and to the same points as shown in tariff, as amended.

SECTION 1

BITUMINOUS COAL, CARLOADS

Rates in Cents per Ton of 2,000 Pounds

When rates are published in this section on the commodity transported from point of origin to destination, rates named in this section will apply regardless of rates between the same points via the same route published in other sections. (Not applicable on Intrastate traffic.)

Index No.	TO ICRR	FROM Mines and Stations shown on pages 6 to 9, incl., of tariff, as amended in following groups:														
		1 (Northern Illinois)			2	3	4	5 (Du Quoin)		6	7	8	9	10 (Chicago) (See Rule 40 of tariff)	
		La Salle Oglesby Minonk	Peoria	Pekin	(Springfield)	(Centralia)	(Belleville)	Bois Tamaros	All Other Stations	(Southern Illinois)	(Linton)	(Evansville)	(Western Kentucky)	Kankakee	All Other Stations
915	Addison Ill.	♦①140			180	190	210	210	210	220	195	220	240	155	②63
917	South Addison Ill.				+175	+175	+195	+195	+195	+205					128
															③63
919	Cloverdale Ill.	♦①140			180	190	210	210	210	220	190	220	255	155	130 63 133
921	Schicks Crossing Ill.	♦①140			180	190	210	210	210	220	190	220	255	155	63 135
923	Munger Ill.	♦①140			180	190	210	210	210	220	190	220	255	155	63 135
927	Coleman Ill.														
929	Youngsdale Ill.	♦①140			180	210	210	210	220	220	190	220	255	155	63 135
931	Bowes Ill.														
933	Plato Center Ill.														
935	Burlington Ill.	♦①140			180	210	210	210	220	220	190	220	255	158	63 135
937	Charter Grove Ill.	♦①140			180	210	210	210	220	220	190	220	255	160	63 135
939	Genoa Ill.	♦①140			180	210	210	210	220	220	190	220	255	174	63 135
941	Hart Ill.	♦①140			♦①185	♦①215	♦①215	♦①215	♦①225	♦①225	♦①195	♦①232	♦①260	174	63 135
943	Colvin Park Ill.	♦①140			♦①185	♦①215	♦①215	♦①215	♦①225	♦①225	♦①195	♦①232	♦①260	179	63 135
945	Irene Ill.	♦①140			♦①185	♦①215	♦①215	♦①215	♦①225	♦①225	♦①195	♦①232	♦①260	180	63 135
947	Perryville Ill.	♦①140			♦①185	♦①215	♦①215	♦①215	♦①225	♦①225	♦①195	♦①232	♦①260	181	63 135
949	Rockford Ill.	♦①125	♦①165	♦①165	♦①195	♦①215	♦①215	♦①215	♦①220	♦①225	♦①205	♦①242	♦①260	183	§④ 135
951	Alworth Ill.														
953	Seward Ill.														
955	Evarts Ill.	♦①125	♦①165	♦①165	♦①195	♦①215	♦①215	♦①215	♦①220	♦①225	♦①205	♦①242	♦①260	183	183
957	Freeport Ill.														
959	Baileyville Ill.														
961	Forreston Ill.														
963	Haldane Ill.	♦①115	♦①160	♦①160	♦①190	♦①210	♦①210	♦①210	♦①215	♦①220	♦①200	♦①230	♦①255	183	183
965	Polo Ill.														
967	Woosung Ill.														
969	North Dixon Ill.	②110	+♦137	♦①	♦①175	♦①195	♦①195	♦①205	♦①205	♦①205	♦①195	♦①225	♦①240	186	186
971	Dixon Ill.		I♦① 137	155											
973	Eldena Ill.	②110	♦①137	♦①155	♦①175	♦①195	♦①195	♦①205	♦①205	♦①205	♦①195	♦①225	♦①240	186	186
975	Amboy Ill.														

§Issued in compliance with order of the Illinois Commerce Commission in Docket 21012 dated June 28, 1932.
①Issued in conformity with order of the Interstate Commerce Commission in Docket No. 25419 dated March 3, 1942.
②Will not apply from Calumet Park, Ill. (IHBRR only).
③Applies from Calumet Park, Ill., only. (IHBRR)
④Rate of 117.5 cents applies on shipments arriving at Chicago, Ill., or other points in Group 10 (except Kankakee and Waukegan, Ill.) via lake and reshipped from docks. Not subject to Rule 40 of tariff. Published to meet natural gas pipe line competition. (I. C. C. 24579)
For explanation of other Reference Marks, see pages 90 and 91 of tariff, as amended.

Amends tariff as follows: pages 109 to 371, inclusive.

The rates shown below cancel rates from and to the same points as shown in tariff, as amended.

SECTION 1—Continued

BITUMINOUS COAL, CARLOADS
Rates in Cents per Ton of 2,000 Pounds

Index No.	TO ICRR —Continued	Application	FROM Mines and Stations shown on pages 6 to 9, incl., of tariff, as amended, in following groups: 1 (Northern Illinois) La Salle Oglesby	1 (Northern Illinois) Minonk	1 (Northern Illinois) Peoria	1 (Northern Illinois) Pekin	2 (Springfield)	3 (Centralia)	4 (Belleville)	5 (Du Quoin)	6 (Southern Illinois)	7 (Linton)	8 (Evansville)	9 (Western Kentucky)	10 (Chicago) (See Rule 40)
1073	Eleroy.....Ill.	.....	163	163	.....	.....	203	223	223	228	233	213	♦①242	268	193

Index No.	TO C&NWRy	Application	FROM Mines and Stations shown on pages 6 to 9, incl., of tariff, as amended, in following groups: 1 (Northern Illinois)	2 (Springfield)	3 (Centralia)	4 (Belleville)	5 (Du Quoin)	6 (Southern Illinois)	6-A (MPRR Stations)	7 (Linton)	8 (Evansville)	9 (Western Kentucky)
	Route via☞		♦Chicago Ill. ***	Chicago, Ill.;—or via Matteson, Ill., EJ&E Ry. and West Chicago, Ill.								
5813	Geneva.....Ill. (See Note)'	.....	135	♦①189	♦①209	♦①209	♦①219	♦①219	♦①219	♦①194	♦①219	♦①254
			Route via—Peoria or South Pekin, Ill.									
		.....	.....	♦①175	♦①195	♦①195	♦①205	♦①205	♦①205	.....	.....	♦①240
	Route via☞		Chicago, Ill.	Peoria or South Pekin, Ill.								
5815	La Fox.....Ill.											
5817	Elburn.....Ill.	.....	♦①145	♦①175	♦①195	♦①195	♦①205	♦①205	♦①205	♦①194	♦①219	♦①240
5819	Maple Park.....Ill.											
5821	Cortland.....Ill.											
	Route via☞		Dixon, Ill.	Peoria or South Pekin, Ill.								
5823	De Kalb.....Ill.											
5825	Malta.....Ill.	.....	♦①155	♦①175	♦①195	♦①195	♦①205	♦①205	♦①205	♦①194	♦①219	♦①240
5827	Creston.....Ill.											
5829	Rochelle.....Ill.	.....	♦①115	♦①175	♦①195	♦①195	♦①205	♦①205	♦①205	♦①194	♦①219	♦①240
5831	Flagg.....Ill.											
5833	Ashton.....Ill.	.....	♦①155	♦①175	♦①195	♦①195	♦①205	♦①205	♦①205	♦①194	♦①219	♦①240
5835	Franklin Grove.....Ill.											
5837	Nachusa.....Ill.											

5823	De Kalb	Ill.											
5825	Malta	Ill.		♦①155	♦①175	♦①195	♦①195	♦①205	♦①205	♦①205	♦①194	♦①219	♦①240
5827	Creston	Ill.											
5829	Rochelle	Ill.		♦***115	♦①175	♦①195	♦①195	♦①205	♦①205	♦①205	♦①194	♦①219	♦①240
5831	Flagg	Ill.											
5833	Ashton	Ill.		♦①155	♦①175	♦①195	♦①195	♦①205	♦①205	♦①205	♦①194	♦①219	♦①240
5835	Franklin Grove	Ill.											
5837	Nachusa	Ill.											
	Route via			**Peoria or South Pekin, Ill.**									
5838	Dixon	Ill.		♦①155	♦①175	♦①195	♦①195	♦①205	♦①205	♦①205	♦①194	♦①219	♦①240
	Route via			**Dixon, Ill.**	**Peoria or South Pekin, Ill.**								
5839	Nelson	Ill.		♦①164	♦①175	♦①195	♦①195	♦①205	♦①205	♦①205	♦①194	♦①219	♦①240
5841	Sterling (Rock Falls)	Ill.		♦①164	♦①175	♦①195	♦①195	♦①205	♦①205	♦①205	♦①199	♦①232	♦①240
5843	Galt	Ill.	Ⓐ	♦①164	185	215	215	235	235	235	216	245	260
			Ⓑ	♦①164	188	215	215	235	235	235	212	245	260

Note.—Will not apply to the St. Charles School for Boys—$3.85 per car over rates to Geneva, Ill. See C&NWRy. I. C. C. No. 10940, G. F. D. No. 8408-S.

For explanation of Reference Marks, see pages 90 and 91 of tariff, as amended.

***♦Cancel route via Rockford, Ill.

①Issued in conformity with order of the Interstate Commerce Commission in Docket No. 25419 dated March 3, 1942.

1637

Amends tariff as follows: Pages 109 to 371, inclusive.

The rates shown below cancel rates from and to the same points as shown in tariff, as amended.

SECTION 1—Continued

BITUMINOUS COAL, CARLOADS

Rates in Cents per Ton of 2,000 Pounds

Index No.	TO C&NWRy —Continued	Application	FROM Mines and Stations shown on pages 6 to 9, incl., of tariff, as amended, in following groups: 1 (Northern Illinois)	2 (Springfield)	3 (Centralia)	4 (Belleville)	5 (Du Quoin)	6 (Southern Illinois)	6-A (MPRR Stations)	7 (Linton)	8 (Evansville)	9 (Western Kentucky)
	Route via☞		♦Chicago, Ill. ***	Peoria or South Pekin, Ill.								
5857	Wayne.....Ill.											
5859	South Elgin.....Ill.		135	180	210	210	220	220	220	195	220	255
5861	Elgin.....Ill.											
5863	Gilberts.....Ill.											
5865	Huntley.....Ill.											
5867	Union.....Ill.		135	♦①195	♦①215	♦①215	♦①220	♦①225	♦①220	202	227	♦①260
5869	Marengo.....Ill.											
5871	Garden Prairie.....Ill.											
5873	Belvidere.....Ill.		♦①140	♦①195	♦①215	♦①215	♦①220	♦①225	♦①220	♦①217	♦①242	♦①260
5875	Cherry Valley.....Ill.		♦140	♦①195	♦①215	♦①215	♦①220	♦①225	♦①220	♦①217	♦①242	♦①260
	Route via☞		Dixon, Ill.	Peoria or South Pekin, Ill.								
5877	Rockford.....Ill.		♦①(179) 125	♦①195	♦①215	♦①215	♦①220	♦①220	♦①220	♦①217	♦①242	♦①260
5879	Winnebago.....Ill.											
5881	Pecatonica.....Ill.		♦①140	♦①195	♦①215	♦①215	♦①220	♦①220	♦①220	♦①217	♦①242	♦①260
5883	Ridott.....Ill.											
5884	Freeport.....Ill.		♦①(179) 125	♦①195	♦①215	♦①215	♦①220	♦①220	♦①220	♦①217	♦①242	♦①260
	Route via☞		Dixon, Ill.	Matteson, Ill., EJ&ERy., and West Chicago, Ill.								
5885	St. Charles.....Ill.		♦①162	♦①189	♦①209	♦①209	♦①219	♦①219	♦①219	♦①194	♦①219	♦①254
				Route via—Peoria or South Pekin, Ill.								
				♦①175	♦①195	♦①195	♦①205	♦①205	♦①205			♦①240
	Route via☞		Rockford, Ill.	Peoria or South Pekin, Ill.								
5895	Dundee.....Ill.		+ 135 ♦① I 135	210	230	230	235	240	235	219	244	275
5897	Carpentersville.....Ill.		+ 135 ♦①	210	230	230	235	240	235	220	254	275
5899	Algonquin.....Ill.		I 135									
	Route via☞		Chicago, Ill.	Peoria or South Pekin, Ill.								
5919	Sycamore.....Ill.		♦①155	♦①175	♦①195	♦①195	♦①205	♦①205	♦①205	♦①194	♦①219	♦①240
	Route via☞		Rockford, Ill.	Peoria or South Pekin, Ill.								

	Route via		Rockford, Ill.	Peoria or South Pekin, Ill.								
5985	Fox River Grove Ill.											
5987	Cary Ill.											
5989	Crystal Lake Ill.											
5991	Ridgefield Ill.	*	♦140	210	230,	230	235	240	235			
5993	Woodstock Ill.	I	140	210	230	230	235	240	235	220	254	275
5995	Hartland Ill.											
5997	Harvard Ill.											
5999	Lawrence Ill.											
6123	Chemung Ill.											
6125	Capron Ill.		*♦140	210	230	230	235	240	235	220	254	275
6127	Popular Grove Ill.		I 140									
6129	Caledonia Ill.											
6955	Roscoe Ill.		* ♦140	(23)210	(23)230	(23)230	(23)235	(23)240	(23)235	♦①232	♦①257	(23)275
			I(53)140									
6957	Beloit Wis.		(23)140	(23)210	(23)230	(23)230	(23)235	(24)240	(23)235	♦①232	(24)257	(23)275

①Issued in conformity with order of the Interstate Commerce Commission in Docket No. 25419 dated March 3, 1942.
***♦Cancel route via Rockford, Ill.

Amends tariff as follows: Pages 109 to 371, inclusive.
The rates shown below cancel rates from and to the same points as shown in tariff, as amended.

SECTION 1—Continued
BITUMINOUS COAL, CARLOADS
Rates in Cents per Ton of 2,000 Pounds

Index No.	TO CB&QRR	Application	FROM Mines and Stations shown on pages 6 to 9, incl., of tariff, as amended in following groups: 3 (Centralia)	4 (Belleville)	5 (Du Quoin)	6 (Southern Illinois)	9 (Western Kentucky)
	Route via ☞		**Centralia, Ill.**				**Centralia or Peoria, Ill.**
9265	Denrock.....Ill.	.....	.....	.....	♦①240	♦①240	♦①240
	Route via ☞		**Chicago, Ill.**		**Centralia, Ill.**		**Centralia or Peoria, Ill.**
9267	Sugar Grove.....Ill.	.....	♦①240	♦①250	♦①240	♦①240	♦①240
	Route via ☞		**Centralia, Ill.** (except as noted)				**Centralia, or Peoria, Ill.**
9269	Big Rock.....Ill.	}					
9271	Hinckley.....Ill.						
9273	Waterman.....Ill.		.....	.....	♦①240	♦①240	♦①240
9275	Shabbona.....Ill.						
9277	Lee.....Ill.	}					
9279	Steward.....Ill.	}	.....	.....	♦①②215	♦①②215	♦①240
9281	Rochelle.....Ill.						
9283	Flag Center.....Ill.	.....	.....	.....	♦①②220	♦①②220	♦①255
9285	Chana.....Ill.	}					
9287	Honey Creek.....Ill.		.....	.....	♦①255	♦①255	♦①255
9289	Oregon.....Ill.						
9291	Stratford.....Ill.	}					
9292	Polo.....Ill.	.....	.....	.....	.....	.....	♦①255
	Route via ☞		**Centralia, Ill.**				**Centralia or Peoria, Ill.**
9303	Kings.....Ill.	}					
9305	Holcomb.....Ill.		.....	.....	♦①220	♦①220	♦①255
9307	Davis Jct.....Ill.						
9309	New Milford.....Ill.	.....	.....	.....	♦①225	♦①225	♦①260
9310	Rockford.....Ill.	}	.....	.....	♦①260	♦①260	♦①260
9311	Mt. Morris.....Ill.						
9323	Walton.....Ill.	}	.....	.....	♦①240	♦①240	♦①240
9325	Harmon.....Ill.						
9327	Stones.....Ill.						
9329	Rock Falls.....Ill.	}	.....	.....	♦①240	♦①240	♦①240
9331	Sterling.....Ill.						
9333	Sands.....Ill.	}	.....	.....	♦①240	♦①240	♦①240
9335	Lyndon.....Ill.						

	Route via		East St. Louis, Ill.	Centralia, Ill.		Centralia or Peoria, Ill.
9393	Alpha.....Ill.		♦①199	♦①205	♦①205	♦①240
9557	Erie.....Ill.					
9559	Hillsdale.....Ill.			♦①222	♦①222	♦①240
9561	Joslin.....Ill.					
9565	Barstow.....Ill.		♦①199	♦①205	♦①205	♦①240
9579	Cleveland.....Ill.					
9581	Briar Bluff.....Ill.					
9583	Warner.....Ill.					
9585	Orion.....Ill.		♦①199	♦①205	♦①205	♦①240
9587	Lynn.....Ill.					
9589	Ophiem.....Ill.					
9591	Rio.....Ill.					
9593	Henderson.....Ill.					

①Issued in conformity with order of the Interstate Commerce Commission in Docket No. 25419 dated March 3, 1942.
②Applies via ICRR, Mendota, Ill., CMStP&PRR, Rochelle, Ill. and CB&QRR.
For explanation of other Reference Marks, see pages 90 and 91 of tariff, as amended.

Amends tariff as follows: Pages 109 to 371 inclusive.

The rates shown below cancel rates from and to the same points as shown in tariff, as amended.

SECTION 1—Concluded

BITUMINOUS COAL, CARLOADS

Rates in Cents per Ton of 2,000 Pounds

Index No.	TO CMStP&PRR —Concluded	FROM Mines and Stations shown on pages 6 to 9, incl., of tariff as amended, in following groups: 1 (Northern Illinois)	2 (Springfield)	3 (Centralia)	4 (Belleville)	5 (Du Quoin)	6 (Southern Illinois)	6-A (MPRR Stations)	7 (Linton)	8 (Evansville)	9 (Western Kentucky)
	Route via ☞	**Mendota, Ill.**									
14295	Holcomb, Ill.	♦①115	♦①190	♦①210	♦①210	♦①215	♦①220	♦①215	♦①212	♦①237	♦①255
14296	Kings, Ill.										
14297	Flag Center, Ill.										
14298	Rochelle, Ill.	♦①115	♦①175	♦①195	♦①195	♦①205	♦①205	♦①205	♦①199	♦①232	♦①240
14299	Stewart Junction, Ill.										
14300	Scarboro, Ill.	+♦①110 I110	♦①175	♦①195	♦①195	♦①205	♦①205	♦①205	♦①199	♦①232	♦①240
14301	Roxbury, Ill.										
14302	Welland, Ill.										
14303	Peterstown, Ill.	+♦110 I110	170	190	190	200	200	200	190	225	△235
14369	②Beloit, Wis.	140	210	230	230	235	240	235	♦①232	257	275
14373	②Rockton, Ill.	+♦140 I140	♦①210	♦①230	♦①230	♦①235	♦①240	♦①235	♦①222	♦①247	♦①275
14375	②Roscoe Siding, Ill.										
14377	②Latham Park, Ill.										
	Route via ☞	**Mendota, Ill.**									
14383	Shirland, Ill.										
14385	Durand, Ill.	+157 I162	♦①210	♦①230	♦①230	♦①230	♦①240	♦①230	♦①222	♦①247	♦①275
14387	Davis, Ill.										
14389	Rock City, Ill.										
14391	Dakota, Ill.										
14393	Freeport, Ill.	♦①㉙ ㉙125	♦①㉙ 195	♦①㉙215	♦①㉙215	♦①㉙220	♦①㉙225	♦①㉙220	♦①217	♦①242	♦①㉙260
14395	Florence, Ill.	♦①165	♦①195	♦①215	♦①215	♦①220	♦①225	♦①220	♦①217	♦①242	♦①260
14397	Shannon, Ill.										

Index No.	TO EJ&ERy	FROM Mines and Stations shown on pages 6 to 9, incl., of tariff, as amended, in following groups: 1 (Northern Illinois)	2 (Springfield)	3 (Centralia)	4 (Belleville)	5 (Du Quoin)	6 (Southern Illinois)	6-A (MPRR Stations)	7 (Linton)	8 (Evansville)	9 (Western Kentucky)	11 (East St. Louis)
	Route via ☞	**Matteson, Ill.**										
22619	Spaulding, Ill.											
22621	Munger, Ill.	♦①140	180	190	210	210	220	210	195	220	255	210
22623	Wayne, Ill.											
22625	Ingalton, Ill.	♦①140	175	175	195	195	205	195	185	220	240	195
22627	West Chicago, Ill.	♦①140	175	175	195	195	205	195	185	214	240	195
22629	Warrenhurst, Ill.											

①Issued in conformity with order of the Interstate Commerce Commission in Docket No. 25419 dated March 3, 1942.
②Applies only via Davis Jct., Ill.
For explanation of other Reference Marks, see pages 90 and 91 of tariff, as amended.

Amends tariff as follows: pages 109 to 371, inclusive.

The rates shown below cancel rates from and to the same points as shown in tariff, as amended.

SECTION 1—Continued

BITUMINOUS COAL, CARLOADS
Rates in Cents per Ton of 2,000 Pounds

Index No.	TO CGWRy	Application	FROM Mines and Stations shown on pages 6 to 9, incl., of tariff as amended in following groups: 1 (Northern Illinois)	2 (Springfield)	3 (Centralia)	4 (Belleville)	5 (Du Quoin)	6 (Southern Illinois)	6-A (MPRR Stations)	7 (Linton)	8 (Evansville)	9 (Western Kentucky)
	Route via		③	⑤Chicago, Ill. or Matteson, Ill., EJ&ERy and Ingalton, Ill.								
12713	St. Charles.....Ill.		♦①140	④㉘①175	♦①㉘195	♦①㉘195	♦①㉘205	♦①㉘205	♦①㉘205	♦①194	♦①219	♦①㉘240
12717	Wasco.....Ill.											
12719	Lily Lake.....Ill.		♦①140	④175	195	195	205	205	205	♦①194	♦①219	240
12721	Virgil.....Ill.											
12723	Richardson.....Ill.											
	Route via		②	⑧	⑤Chicago, Ill. or Matteson, Ill., EJ&ERy and Ingalton, Ill.							
12727	Sycamore.....Ill.		♦①140	♦① ④㉘175	♦①㉘195	♦①㉘195	♦①㉘205	♦①㉘205	♦①㉘205	♦①194	♦①219	♦①㉘240
12729	De Kalb.....Ill.											
12731	Five Points.....Ill.											
12733	Wilkinson.....Ill.		♦①140	♦①④185	♦①205	♦①205	♦①210	♦①215	♦①210	♦①194	♦①219	♦①250
12735	Clare.....Ill.		♦①140	♦①④190	♦①210	♦①210	♦①215	♦①220	♦①215	♦①194	♦①224	♦①255
	Route via		Dunbar (South Freeport), Ill.									
12737	Esmond.....Ill.											
12739	Lindenwood.....Ill.											
12741	Holcomb.....Ill.		♦①140	♦①④190	♦①210	♦①210	♦①215	♦①220	♦①215	♦①212	♦①237	♦①255
12743	Stillman Valley.Ill.											
12745	Byron.....Ill.											
12747	Myrtle.....Ill.											
12749	Egan.....Ill.		♦①160	♦①④190	♦①210	♦①210	♦①215	♦①220	♦①215	♦①212	♦①237	♦①255
12751	German Valley..Ill.											
	CMStP&PRR Route via		Chicago, Ill.									
14181	Bensenville.....Ill.											
14183	Wooddale.....Ill.											
14185	Itasca.....Ill.											
14187	Roselle.....Ill.		♦①140	180	190	210	210	220	210	195	220	255
14189	Ontarioville.....Ill.											
14191	Bartlett.....Ill.											
14193	Spaulding.....Ill.											
14195	Hammond's.....Ill.		♦①140	180	210	210	215	220	215	195	220	255
	Route via		Mendota, Ill.							♦Chicago, Ill.	Mendota, Ill.	

	Route via☞		Mendota, Ill.							♦Chicago, Ill.	Mendota, Ill.	
14197	Elgin	Ill.	♦①140	180	210	210	230	230	230	195	220	255
14199	♦Almora	Ill.										
14201	McQueen	Ill.										
14203	Pingree Grove	Ill.										
14205	Starks	Ill.	♦①140	180	210	210	230	230	230	195	220	255
14207	Hampshire	Ill.										
14209	New Lebanon	Ill.										
14211	Genoa	Ill.	♦①140	180	210	210	230	230	230	195	220	255
14213	Kingston	Ill.										

***♦Route via Mendota, Ill., cancelled.
①Issued in conformity with order of the Interstate Commerce Commission in Docket No. 25419 dated March 3, 1942.
③Applies via Dunbar (South Freeport), Ill.
②Applies via Matteson, Ill., EJ&ERy and Ingalton, Ill., or via Dunbar (South Freeport), Ill.
④Will not apply from Colliery, Ill.
⑤Applies on Illinois Intrastate traffic only. Via this route, rates are not applicable at intermediate points under authority of Order No. 1139 of Illinois Railroad and Warehouse Commission of June 26, 1931, as amended, in conjunction with General Order No. 125 and Fortieth Section Order No. 29 of the Illinois Commerce Commission.
For explanation of other Reference Marks, see pages 90 and 91 of tariff, as amended.

Amends tariff as follows: Pages 109 to 371 inclusive.
The rates shown below cancel rates from and to the same points as shown in tariff, as amended.

SECTION 1—Continued
BITUMINOUS COAL, CARLOADS
Rates in Cents per Ton of 2,000 Pounds

Index No.	TO CMStP&PRR —Continued	Application	FROM Mines and Stations shown on pages 6 to 9, incl., of tariff, as amended in following groups: 1 (Northern Illinois)	2 (Springfield)	3 (Centralia)	4 (Belleville)	5 (Du Quoin)	6 (Southern Illinois)	6-A (MPRR Stations)	7 (Linton)	8 (Evansville)	9 (Western Kentucky)
			Route via—Mendota, Ill.							♦Chicago, Ill. ***	Mendota, Ill.	
14215	Kirkland.....Ill.	.....	♦①140	180	210	210	220	220	220	195	220	255
			Route via—Matteson, Ill., EJ&ERy., and Aurora, Ill.									
		.....	.....	180	210	210	③220	220	.....	.....	.....	255
	Route via☞		Mendota, Ill.							♦Chicago, Ill. ***	Mendota, Ill.	
14217	Fairdale.....Ill.	.....	♦①140	180	210	210	220	220	220	195	220	255
14219	Monroe Center.....Ill.											
	Route via☞		Mendota, Ill.									
14221	Davis Junction.....Ill.	.....	♦①115	♦①190	♦①210	♦①210	♦①215	♦①220	♦①215	♦①205	♦①230	♦①255
14223	Stillman Valley.....Ill.	.....	♦①140	♦①190	♦①210	♦①210	♦①215	♦①220	♦①215	♦①205	♦①230	♦①255
14225	Byron.....Ill.											
14227	Leaf River.....Ill.	.....	♦①140	♦①190	♦①210	♦①210	♦①215	♦①220	♦①215	♦①205	♦①230	♦①255
14229	Adeline.....Ill.											
14231	Forreston.....Ill.	.....	*♦①178 120 I♦①140	♦①190	♦①210	♦①210	♦①215	♦①220	♦①215	♦①205	♦①230	♦①255
	Route via☞		Mendota, Ill., or Forreston, Ill. (DT-99-3290)									
14233	Harper.....Ill.	.....	*㉘150 I㉘155	♦①190	㉘215	㉘215	㉘225	㉘225	㉘225	♦①205	♦①230	㉘260
14235	Lanark.....Ill.	.....	*157 I162	♦①190	215	215	225	225	225	♦①205	♦①230	260
14237	Fay.....Ill.											

Index No.	TO	Application	FROM Mines and Stations shown on pages 6 to 9, incl., of tariff, as amended in following groups: 1 (Northern Illinois)	2 (Springfield)	3 (Centralia)	4 (Belleville)	5 (Du Quoin) Bois Tamaroa	5 (Du Quoin) All Other Stations	6 (Southern Illinois)	6-A (MPRR Stations)	7 (Linton)	8 (Evansville)	9 (Western Kentucky)
	Route via☞		Matteson, Ill., EJ&ERy and, Spaulding, Ill.								Matteson, Ill., EJ&ERy and Aurora, Ill.		
		.....	♦①㉘115	♦①㉘195	♦①㉘215	♦①㉘215	♦①㉘220	♦①㉘220	♦①㉘225	⑦	.....	.....	♦①㉘260

		.....	♦①28 115	♦①28 195	♦①28 215	♦①28 215	♦①28 220	♦①28 220	♦①28 235	②	.....	.....	♦①28 260
14274	Rockford.....Ill.												
14275	Camp Grant....Ill.		Route via—Mendota, Ill.										
		.....	♦①28 125	♦①195	♦①215	♦①215	♦①220	♦①220	♦①235	♦①220	♦①217	♦①242	♦①260
	Route via☞		Matteson, Ill., EJ&ERy, and Aurora, Ill.										
14280	De Kalb.....Ill.	.....	.....	♦①28 175	♦①28 195	♦①28 195	♦①28 195	♦①28 205	♦①28 205	③	.....	.....	♦①28 240
14281	Chase.....Ill.												
14282	Troxel.....Ill.	.....	.....	♦①175	♦①195	♦①195	♦①195	♦①205	♦①205	②	.....	.....	♦①240
14283	Duffin.....Ill.												

①Issued in conformity with order of the Interstate Commerce Commission in Docket No. 25419 dated March 3, 1942.
②For rates see Missouri Pacific RR Freight Tariff No. 896-Q, I. C. C. No. A-9487, Ill. C. C. No. 397, I. C. R. R. Coal Tariff No. 3020-H.
③Rate from Bois and Tamaroa, Ill., 210 cents.
***♦Route via Mendota, Ill., cancelled.
For explanation of other Reference Marks, see pages 90 and 91 of tariff, as amended.

Subject to Tariff of Increased Rates and Charges No. X-148, Agent L. E. Kipp's I. C. C. No. A-3386, Ill. C. C. No. 311, I. R. C. No. A-169, M. R. C. No. 295, supplements thereto or successive issues thereof.
(3400) This Supplement is subject to the provisions of Supplement No. 2 (Service Order 68).

APPLIES ONLY ON INTERSTATE TRAFFIC

Supplement No. 12 to
I. C. C. No. E-1802

Supplements Nos. ①2, 3, ②4, 8, 10, 11 and 12 contain all changes from the original tariff effective on the date hereof.

Illinois Central Railroad Company

—IN CONNECTION WITH—

PARTICIPATING CARRIERS AS SHOWN IN TARIFF AND EFFECTIVE SUPPLEMENTS

Stamp here date received

SUPPLEMENT No. 13 TO
I. C. R. R. COAL TARIFF No. 3100-H

Supplements Nos. ①2, 3, ②4 8, ③10, 11, 12 and 13 contain all changes from the original tariff effective on the date hereof.

See page 2 for Individual Lines' Tariff Numbers

SUPPLEMENT TO
FREIGHT TARIFF

—OF—

LOCAL, JOINT AND PROPORTIONAL RATES

—APPLYING ON—

Anthracite Coal, Bituminous Coal, Carbonized Bituminous Coal, and Bituminous Coal Briquettes, Carloads and Less Carloads

FROM	TO
Mines and Stations in States of ALABAMA ILLINOIS INDIANA IOWA KENTUCKY WISCONSIN Also ST. LOUIS, MO. Shown on pages 6 to 9, inclusive, of tariff, as amended.	Stations in States of COLORADO ILLINOIS INDIANA IOWA KANSAS MICHIGAN MINNESOTA MISSOURI MONTANA NEBRASKA NORTH DAKOTA SOUTH DAKOTA WISCONSIN WYOMING On ILLINOIS CENTRAL R. R. AND CONNECTIONS

ALSO DISTANCE RATES

Between stations on Illinois Central R. R. in States of Illinois, Indiana, Iowa, Minnesota, South Dakota and Wisconsin, shown in Section No. 4, pages 383 to 391, inclusive, of tariff.

Governed by Classifications, Exceptions thereto and Rules Circular referred to in Rules 1 and 10 of tariff.

ISSUED JULY 24, 1942 **EFFECTIVE SEPTEMBER 3, 1942**
(Except as otherwise provided herein)

Departure from the terms of Rule 9(e) of Tariff Circular No. 20 is authorized under permission of the Interstate Commerce Commission No. 7920 of March 17, 1942.

①Special Supplement (Service Order No. 68).
②Special Supplement of Increased Rates (Ex Parte 148)
③Illinois intrastate supplement issued under Illinois Commerce Commission Docket 30838 of June 11, 1942. (Suspension of minimum weights in box or stock cars.)

Issued by
W. L. REEVES,
General Freight Agent,
135 East Eleventh Place,
CHICAGO, ILL.

J. L. SHEPPARD,
Freight Traffic Manager,
CHICAGO, ILL.

R. A. TROVILLION,
Assistant Freight Traffic Manager,
CHICAGO, ILL.

N. L. RICHMOND,
Coal Traffic Manager,
CHICAGO, ILL.

(590)

1643

Amends tariff as follows: Pages 109 to 371, inclusive, and pages 4, 7 and 8 of Supplement No. 10.

The rates shown below cancel rates from and to the same points as shown in tariff, as amended.

SECTION 1

BITUMINOUS COAL, CARLOADS

Rates in Cents per Ton of 2,000 Pounds

When rates are published in this section on the commodity transported from point of origin to destination, rates named in this section will apply regardless of rates between the same points via the same route published in other sections. (Not applicable on Intrastate traffic.)

Index No.	TO C&NWRy	Application	FROM Mines and Stations shown on pages 6 to 9, incl., of tariff, as amended, in following groups: 1 (Northern Illinois)	2 (Springfield)	3 (Centralia)	4 (Belleville)	5 (Du Quoin)	6 (Southern Illinois)	6-A (MPRR Stations)	7 (Linton)	8 (Evansville)	9 (Western Kentucky)
	Route via ☞		**Dixon, Ill.**	**Peoria or South Pekin, Ill.**								
5877	Rockford.....Ill.		(1)(179) 125	(1)195	(1)215	(1)215	(1)220	♦(1)(3)225	(1)220	(1)217	(1)242	(1)260
5879	Winnebago.....Ill.											
5881	Pecatonica.....Ill.		(1)140	(1)195	(1)215	(1)215	(1)220	♦(1)(3)225	(1)220	(1)217	(1)242	(1)260
5883	Ridott.....Ill.											
5884	Freeport.....Ill.		(1)(179) 125	(1)195	(1)215	(1)215	(1)220	♦(1)(3)225	(1)220	(1)217	(1)242	(1)260
	CMStP&PRR Route via ☞		**Matteson, Ill., EJ&ERy and Spaulding, Ill.**							**Matteson, Ill., EJ&E Ry and Aurora, Ill.**		
14274	Rockford.....Ill.		♦(1)(3)(29) 125	(1)(29) 195	(1)(29) 215	(1)(29) 215	(1)(29) 220	(1)(29) 225	(3)	.....	.....	(1)(29) 260
14275	Camp Grant.....Ill.		**Route via—Mendota, Ill.**									
			(1)(29) 125	(1)195	(1)215	(1)215	(1)220	(1)225	(1)220	(1)217	(1)242	(1)260
	Route via ☞		**Mendota, Ill.**									
14383	Shirland.....Ill.											
14385	Durand.....Ill.		+ 157									
14387	Davis.....Ill.		I 162	(1)210	(1)230	(1)230	♦(1)(3)235	(1)240	♦(1)(3)235	(1)222	(1)247	(1)275
14389	Rock City.....Ill.											
14391	Dakota.....Ill.											
14393	Freeport.....Ill.		(2)(4)	(1)(29)195	(1)(29)215	(1)(29)215	(1)(29)220	(1)(29)225	(1)(29)220	(1)217	(1)242	(1)(29)260

(1) Issued in conformity with order of the Interstate Commerce Commission in Docket No. 25419 dated March 3, 1942.
(2) For rates see Missouri Pacific RR Freight Tariff No. 896-Q, I. C. C. No. A-9487, Ill. C. C. No. 397, I. C. R. R. Coal Tariff No. 3020-H.
(3) **Effective August 2, 1942.** Issued on five (5) days' notice under special permission of the Interstate Commerce Commission No. 10671 of July 22, 1942.
(4) ♦ Cancel on interstate traffic. Apply class or combination rates.
For explanation of other Reference Marks, see pages 90 and 91 of tariff, as amended.

RATES AND CHARGES PUBLISHED IN THIS SUPPLEMENT ARE SUBJECT TO THE INCREASES PROVIDED IN ITEM X-148 OR SUCCESSIVE ISSUES THEREOF.
THIS SUPPLEMENT IS SUBJECT TO PROVISIONS OF SUPPLEMENT No. 20.

Supplement No. 27 to
I. C. C. No. B-7246

Supplements Nos. ①1, ②9, ③10, 13, ①14, 18, ④20, 25, 26 and 27 contain all changes from the original tariff that are effective on the date hereof.

Supplement No. 27 to G. F. D. No. 15200-D

Supplements Nos. ①1, ②9, ③10, 13, ①14, 18, ④20, 25, 26 and 27 contain all changes.

①Under postponement.
②Postponement Notice.
③Partial Vacation Notice—I. & S. Docket 4532 (Short Line Routing).
④Special Supplement (Service Order No. 68).

Chicago, Milwaukee, St. Paul and Pacific Railroad Company

(HENRY A. SCANDRETT, WALTER J. CUMMINGS, GEORGE I. HAIGHT, TRUSTEES)

IN CONNECTION WITH

Participating Carriers Named on Pages 2 and 3 of Tariff as Amended.

SUPPLEMENT TO

LOCAL, JOINT AND PROPORTIONAL FREIGHT TARIFF

NAMING COMMODITY RATES ON

Bituminous Coal, Carloads

Minimum weights as provided in tariff

FROM

Mines and Stations in Indiana on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Terre Haute Division) and Indiana Railroad

(As shown on page 3 of tariff.)

TO

Stations on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company and Connecting Lines in Illinois, Iowa, Kansas, Michigan (Upper Peninsula), Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin

This tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the amended fourth section of the Act to regulate commerce is permitted by authority of Interstate Commerce Commission Fourth Section Orders as indicated in tariff as amended, and Fourth Section Order No. 14062 of December 27, 1940.

ISSUED JULY 1, 1942. **EFFECTIVE AUGUST 2, 1942.**

Issued in compliance with order of the Interstate Commerce Commission in Docket No. 25419 of March 3, 1942, as amended June 1, 1942.

This supplement is issued under authority of Rule 9 (m), Tariff Circular No. 20. It will be cancelled by a new supplement to be filed on or before October 1, 1942.

Issued by

J. J. LANDRIGAN,
Assistant General Freight Agent,
516 West Jackson Boulevard,
(A.U.G.) Chicago, Illinois.

W. H. KUHLS,
Coal Traffic Manager,
Chicago, Illinois.

E. J. HYETT,
General Freight Agent,
Chicago, Illinois.

MADE IN U. S. A. (3500) (Edw. Keogh Ptg. Co., Chicago—81578)

1645

Refer to page 40 of tariff, or as amended, and make the following change:

EXPLANATION OF SYMBOLS AND REFERENCE MARKS

Cancels corresponding symbols or reference marks appearing on page 40 of tariff, or as amended.

Symbol or Reference Mark.	EXPLANATION.
②	Issued in compliance with order of the Interstate Commerce Commission in Docket No. 25419 of March 3, 1942, as amended June 1, 1942. (CC-1587; CC-1636.)

Rates named in this supplement supersede rates named in tariff or as amended, appearing on pages 45, 46, 60, 61, 64 and 73 from and to stations bearing corresponding index numbers.

RATES IN CENTS PER TON OF 2,000 POUNDS.

Index No.	TO	FROM DISTRICTS. (See page 3 of tariff.) Clinton. L	Clinton. F	Linton. L	Linton. F	Route. (See Items 200 to 820 of tariff, as amended.)
	C. M. St. P. & P. R. R.					
287	Davis Junction Ill.	◆190	◆190	◆200	◆200	A
288	Stillman Valley Ill.	◆190	◆190	◆200	◆200	A
289	Byron Ill.					
290	Leaf River Ill.	◆190	◆190	◆200	◆200	A
291	Adeline Ill.					
292	Forreston Ill.	◆190	◆190	◆200	◆200	A
293	Harper Ill.	◆190	◆190	◆200	◆200	A
324	Holcomb Ill.	◆207	◆207	◆212	◆212	A
325	Kings Ill.					
326	Flag Center Ill.					
327	Rochelle Ill.	◆189	◆189	◆199	◆199	B
328	Steward Junction Ill.	◆185	◆185	◆195	◆195	B
329	Scarboro Ill.					
330	Roxbury Ill.					
331	Welland Ill.					
371	Beloit Wis.	▲②210	▲②210	▲②220	▲②220	㉘A
374	Rockton Ill.	◆210	◆210	◆220	◆220	A
375	Roscoe Siding Ill.					
376	Latham Park Ill.					
377	Rockford Ill.	◆195	◆195	◆205	◆205	A
377-A	Camp Grant Ill.					

Index No.	TO	FROM DISTRICTS. (See page 3 of tariff.) Clinton. L	Clinton. F	Linton. L	Linton. F	Route. (See Items 200 to 820 of tariff, as amended.)
	C. & N. W. Ry. —Concluded.					
2355	Malta Ill.	◆189	◆189	◆199	◆199	A
2356	Creston Ill.					
2357	Rochelle Ill.					
2358	Flagg Ill.	◆189	◆189	◆199	◆199	A
2359	Ashton Ill.					
2360	Franklin Grove Ill.					
2361	Nachusa Ill.					
2362	Dixon Ill.	◆189	◆189	◆199	◆199	A
2363	Nelson Ill. (Lee Cy.)					
2364	Sterling Ill. (Rock Falls.)					
2380	Belvidere Ill.	◆212	◆212	◆217	◆217	A
2381	Cherry Valley Ill.					
2382	Rockford Ill.					
2383	Winnebago Ill.	◆212	◆212	◆217	◆217	A
2384	Pecatonica Ill.					
2385	Ridott Ill.					
2386	Freeport Ill.					
2387	St. Charles Ill.	◆189	◆189	◆194	◆194	C
2406	Sycamore Ill.	◆189	◆189	◆194	◆194	A
2446	Roscoe Ill.	◆227	◆227	◆232	◆232	C
2796	Beloit Wis.	◆②227	◆②227	◆②232	◆②232	C

378	Shirland	Ill.					
379	Durand	Ill.	◆210	◆210	◆220	◆220	A
380	Davis	Ill.					
381	Rock City	Ill.					
382	Dakota	Ill.	◆210	◆210	◆220	◆220	A
383	Freeport	Ill.	◆195	◆195	◆205	◆205	A
384	Florence	Ill.					
385	Shannon	Ill.	◆195	◆195	◆205	◆205	A
386	Nichols	Ill.					
387	Wilkinson	Ill.	◆185	◆185	190	190	A
388	Bradt	Ill.					
389	De Kalb	Ill.	◆185	◆185	◆190	◆190	A
	C. & N. W. Ry.						
2349	Geneva	Ill.	◆189 (24)	◆189 (24)	◆194 (24)	◆194 (24)	C
2350	La Fox	Ill.					
2351	Elburn	Ill.					
2352	Maple Park	Ill.	◆189	◆189	◆194	◆194	C
2353	Cortland	Ill.					
2354	De Kalb	Ill.					

	C. G. W. R. R.						
3906	St. Charles	Ill.	◆189	◆189	◆194	◆194	A
3908	Wasco	Ill.					
3909	Lily Lake	Ill.					
3910	Virgil	Ill.	◆189	◆189	◆194	◆194	A
3911	Richardson	Ill.					
3913	Sycamore	Ill.					
3914	De Kalb	Ill.	◆189	◆189	◆194	◆194	A
3915	Five Points	Ill.					
3916	Wilkinson	Ill.	◆195	◆195	◆200	◆200	A
3917	Clare	Ill.	◆207	◆207	◆212	◆212	A
3918	Esmond	Ill.					
3919	Lindenwood	Ill.					
3920	Holcomb	Ill.	◆207	◆207	◆212	◆212	A
3921	Stillman Valley	Ill.					
3922	Byron	Ill.					
3923	Myrtle	Ill.					
3924	Egan	Ill.	◆207	◆207	◆212	◆212	A
3925	German Valley	Ill.					
3927	South Freeport	Ill.	◆207	◆207	◆212	◆212	A

For explanation of abbreviations and other reference marks, see pages 2, 40, 46 and 60 of tariff, or as amended.

Rates named in this supplement supersede rates named in tariff or as amended, appearing on pages 93 and 94 from and to stations bearing corresponding index numbers.

RATES IN CENTS PER TON OF 2,000 POUNDS.

Index No.	TO	FROM DISTRICTS. (See page 3 of tariff.) Clinton. L	Clinton. F	Linton. L	Linton. F	Route. (See Items 200 to 820 of tariff, as amended.)
	I. C. R. R.					
7495	Dixon.....Ill.	.....	.....	♦199	♦199	A
7506	Amboy.....Ill.					
7507	Eldena.....Ill.	.....	.....	♦199	♦199	A
7508	North Dixon.....Ill.					
7509	Woosung.....Ill.					
7510	Polo.....Ill.					
7511	Haldane.....Ill.	.....	.....	♦212	♦212	A
7512	Forreston.....Ill.					
7513	Baileyville.....Ill.	.....	.....	♦217	♦217	A
	I. C. R. R. —Concluded.					
7572	Hart.....Ill.					
7573	Colvin Park.....Ill.					
7574	Irene.....Ill.	♦202	♦202	♦207	♦207	B
7575	Perryville.....Ill.					
7576	Rockford.....Ill.	♦212	♦212	♦217	♦217	B
7577	Alworth.....Ill.					
7578	Seward.....Ill.					
7579	Evarts.....Ill.	♦212	♦212	♦217	♦217	B
7580	Freeport.....Ill.					
7604	Eleroy.....Ill.	♦212	♦212	218	218	B

For explanation of abbreviations and reference marks, see pages 2 and 40 of tariff, or as amended.

RATES AND CHARGES PUBLISHED IN THIS SUPPLEMENT ARE SUBJECT TO THE INCREASES PROVIDED IN ITEM X-148 OR SUCCESSIVE ISSUES THEREOF.
THIS SUPPLEMENT IS SUBJECT TO PROVISIONS OF SUPPLEMENT No. 20.

Supplement No. 28 to
I. C. C. No. B-7246
Cancels Supplements Nos. 25 and 26.
Supplements Nos. ①1, ③9, ②10, 13, ①14, 18, ④20, 27 and 28 contain all changes from the original tariff that are effective on the date hereof.

Supplement No. 28 to G. F. D. No. 15200-D **Cancels Supplements Nos. 25 and 26**

Supplements Nos. ①1, ③9, ②10, 13, ①14, 18, ④20, 27 and 28 contain all changes.

①Under postponement.
②Postponement Notice.
③Partial Vacation Notice—I. & S. Docket 4532 (Short Line Routing).
④Special Supplement (Service Order No. 68).

Chicago, Milwaukee, St. Paul and Pacific Railroad Company

(HENRY A. SCANDRETT, WALTER J. CUMMINGS, GEORGE I. HAIGHT, TRUSTEES)

IN CONNECTION WITH

Participating Carriers Named on Pages 2 and 3 of Tariff as Amended.

SUPPLEMENT TO

LOCAL, JOINT AND PROPORTIONAL FREIGHT TARIFF

NAMING COMMODITY RATES ON

Bituminous Coal, Carloads

Minimum weights as provided in tariff

FROM

Mines and Stations in Indiana on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Terre Haute Division) and Indiana Railroad
(As shown on page 3 of tariff.)

TO

Stations on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company and Connecting Lines in Illinois, Iowa, Kansas, Michigan (Upper Peninsula), Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin

This tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the amended fourth section of the Act to regulate commerce is permitted by authority of Interstate Commerce Commission Fourth Section Orders as indicated in tariff as amended, and Fourth Section Order No. 14062 of December 27, 1940.

ISSUED JULY 7, 1942.

EFFECTIVE AUGUST 10, 1942.
(Except as otherwise provided herein.)

Issued by

J. J. LANDRIGAN,
Assistant General Freight Agent,
513 West Jackson Boulevard,
(A.U.G.) Chicago, Illinois.

W. H. KUHLS,
Coal Traffic Manager,
Chicago, Illinois.

E. J. HYETT,
General Freight Agent,
Chicago, Illinois.

MADE IN U. S. A. (3500) (Edw. Keogh Ptg. Co., Chicago—5643)

1648

Item	INCREASE IN RATES AND CHARGES.
	Except as otherwise provided, rates and charges in this tariff and prior supplements are subject to the **Tariff of Increased Rates and Charges No. X-148,** Agent L. E. Kipp's I. C. C. No. A-3386. **Reissued from Supplement No. 22, effective March 18, 1942.**
§X-148	Except as otherwise provided, rates and charges in supplements referring to this item are subject to **Tariff of Increased Rates and Charges,** referred to above. **Reissued from Supplement No. 23, effective April 3, 1942.**
	§The form of this publication is permitted under permission of the Interstate Commerce Commission No. 7620 of March 2, 1942, as amended.

[21] POSTPONEMENT NOTICE.

The effective date of Supplement No. 14 to I. C. C. No. B-7246, Supplement No. 14 to G. F. D. No. 15200-D, now under postponement until May 9, 1942, is hereby further postponed until November 9, 1942.
During period of postponement rates named in tariff, or as amended, will apply.

Refer to page 3 of tariff, or as amended, and make the following changes:

LIST OF PARTICIPATING CARRIERS

Carriers. The List of Participating Carriers is as shown in tariff, and effective supplements, except:	Abbreviations.	Concurrence. FX	Concurrence. No.
[2] Toledo, Peoria & Western Railroad	T. P. & W. R. R.	Eliminate (see T. P. & W. R. R. below.	
[2] Toledo, Peoria & Western Railroad (John W. Barriger, Federal Manager)	T. P. & W. R. R.	5	33
[21] Wabash Railway Company (Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers)	Wab. Ry	Eliminate. (See Wab Ry. below.)	
[21] Wabash Railroad Company	Wab. R. R.	4	921

CHANGE IN NAME OF CARRIERS.

The Carrier shown in Column No. 2 below, by its adoption notice shown in Column No. 3 below, having taken over tariffs, etc., of the Carrier shown in Column No. 1 below, the Carrier shown in Column No. 2 below is hereby substituted for the carrier shown in Column No. 1 below wherever it appears in this tariff, as amended.

COLUMN No. 1. Old Carrier.	COLUMN No. 2. Adopting Carrier.	COLUMN No. 3. Adoption Notice.
Toledo, Peoria & Western Railroad	Toledo, Peoria & Western Railroad (John W. Barriger, Federal Manager)	I. C. C. 254
Wabash Railway Company (Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers)	Wabash Railroad Company	I. C. C. 7358

Refer to pages 10, 21, 26 and 32 of tariff, or as amended, and make the following additions:

INDEX OF POINTS TO WHICH RATES APPLY.

STATIONS.	Index No.	STATIONS.	Index No.	STATIONS.	Index No.
Camp Grant.....Ill.	377-A	Merrimac (Sauk City-Prairie du Sac).....Wis.	425-A	Rosemount (Gopher Ordnance Works).....Minn.	4058
Capitol Drive.....Wis.	°15				
Jackson Street.....Wis.	°15				

Refer to page 40 of tariff, or as amended, and make the following changes:

EXPLANATION OF SYMBOLS AND REFERENCE MARKS

Cancels corresponding symbols or reference marks appearing on page 40 of tariff, or as amended.

Refer to page 40 of tariff, or as amended, and make the following changes:

EXPLANATION OF SYMBOLS AND REFERENCE MARKS

Cancels corresponding symbols or reference marks appearing on page 40 of tariff, or as amended.

Symbol or Reference Mark.	EXPLANATION.
⊙	Item.
26 1	Issued in compliance with order of the Interstate Commerce Commission in Docket No. 25419 of March 3, 1942, as amended April 30, 1942. (CC-1587; CC-1636.)
25 (1)	Applies via C. M. St. P. & P. R. R. through Savanna, Ill. **Rate expires with December 31, 1942,** unless sooner cancelled, changed or extended. (CC-1695-5.)
21 (8)	**Expires with September 30, 1942,** unless sooner cancelled, changed or extended. (CC-1472.)
25 (26)	Applies via route provided in tariff to junction with C. & N. W. Ry., thence via C. & N. W. Ry. through Madison, Elroy, Wilton and Sparta, Wis. **Rates expire with December 31, 1942,** unless sooner cancelled, changed or extended. (CC-1695-5.)
21*	**Reissued** from Supplement No. 21, effective March 31, 1942.
23 A	**Reissued** from Supplement No. 23, effective April 3, 1942.
24	**Reissued** from Supplement No. 24, effective May 9, 1942.
25	**Reissued** from Supplement No. 25, effective June 15, 1942.
26	**Reissued** from Supplement No. 26, effective July 2, 1942.

For explanation of abbreviations and other reference marks, see pages 2 and 40 of tariff, or as amended.

APPLICATION OF RATES.

Item	Subject.	Application.
[21] 15-B Cancels 15-A	Application of Milwaukee, Wis., Rates.	Rates published herein to Milwaukee, Wis., will also apply to following stations. Routing to be the same as routing to Milwaukee, Wis., via destination line on which station is located.

Station.	Railroad on which Located.	Station.	Railroad on which Located.
Bay View.....Wis.	C. M. St. P. & P. / C. & N. W.	Milwaukee Stock Yards.....Wis.	C. M. St. P. & P.
Capitol Drive.....Wis.	C. & N. W.	Mitchell Street.....Wis.	C. & N. W.
Chestnut Street.....Wis.	C. M. St. P. & P.	National Home.....Wis.	C. M. St. P. & P.
East North Avenue...Wis.	C. & N. W.	North Avenue.....Wis.	C. M. St. P. & P.
Gibson.....Wis.	C. M. St. P. & P.	North Milwaukee.....Wis.	C. M. St. P. & P.
Florida Street.....Wis.	C. & N. W.	Shorewood.....Wis.	C. & N. W.
Jackson Street.....Wis.	C. & N. W.	Stowell.....Wis.	C. M. St. P. & P.
Layton Park.....Wis.	C. & N. W.	Wauwatosa.....Wis.	C. M. St. P. & P.
Lincoln Avenue.....Wis.	C. & N. W.	West Allis.....Wis.	C. M. St. P. & P. / C. & N. W.
Milwaukee Shops...Wis.	C. M. St. P. & P.		

[21] 100-B Cancels 100-A	Minimum Weights.	**In Open Top Cars:** Minimum weight will be the marked capacity of car loaded, except that when car is loaded to full visible capacity actual weight of Coal will be the minimum weight. **In Box Cars or Stock Cars:** When marked capacity of car is 80,000 pounds or less minimum weight will be 60,000 pounds. When marked capacity of car is over 80,000 pounds minimum weight will be 80,000 pounds. (CC-1358-1-X.)

Rates named in this supplement are additions to rates appearing on page 47 of tariff and also supersede rates named in tariff or as amended, appearing on pages 46, 47, 62, 75, 81 and 96 from and to stations bearing corresponding index numbers.

RATES IN CENTS PER TON OF 2,000 POUNDS.

Index No.	TO	FROM DISTRICTS. (See page 3 of tariff.) Clinton. L	Clinton. F	Linton. L	Linton. F	Route. (See Items 200 to 820 of tariff, as amended.)	Index No.	TO	FROM DISTRICTS. (See page 3 of tariff.) Clinton. L	Clinton. F	Linton. L	Linton. F	Route. (See Items 200 to 820 of tariff, as amended.)

Index No.	TO	FROM DISTRICTS. (See page 3 of tariff.) Clinton. L	Clinton. F	Linton. L	Linton. F	Route. (See Items 200 to 820 of tariff, as amended.)
	C. M. St. P. & P. R. R.					
368	Clinton Jct.....Wis.					
369	Porters.....Wis.	]249	]249	]259	]259	A
370	Morgan's Farm...Wis.					
372	Riton.....Wis.	©	©	©	©	.....
373	Afton.....Wis.	]249	]249	]259	]259	A
414	Milton Jct.....Wis.	]253	]253	]263	]263	A
23A 425-A	Merrimac (Sauk City-Prairie du Sac) (CC-1914.) Wis.	293	293	303	303	A
470	Janesville.....Wis.	]249	]249	]259	]259	A
	C. & N. W. Ry.					
2500	Clinton Jct.....Wis.					
2501	Tiffany.....Wis.	]249	]249	]259	]259	C
2502	Janesville.....Wis.					
2503	Milton Jct.....Wis.					
2504	Koshkonong.....Wis.	]253	]253	]263	]263	C
2505	Ft. Atkinson.....Wis.					

Index No.	TO	FROM DISTRICTS. (See page 3 of tariff.) Clinton. L	Clinton. F	Linton. L	Linton. F	Route. (See Items 200 to 820 of tariff, as amended.)
	C. & N. W. Ry. —Concluded					
2797	Afton.....Wis.	]249	]249	]259	]259	C
23A 2811	Okee.....Wis.	293	293	303	303	C
23A 2812	Merrimac.....Wis.					
	C. G. W. R. R.					
4058	Rosemount (Gopher Ordnance Works).....Minn. (Formerly Coates.)	360	341	370	351	A
	C. R. I. & P. Ry.					
5078	Fernald.....Iowa	350	331	360	341	A, C
	M. C. & C. L. R. R.					
8002	Emery.....Iowa (CC-1720-31.)	350	†§ ⑤285	360	†§ ⑤295	A

©**Cancel** account no facilities for handling freight.

†**Effective July 15, 1942.** Issued on five days' notice under permission of the Interstate Commerce Commission No. 10219 of July 2, 1942.

For explanation of abbreviations and other reference marks, see pages 2 and 40 of tariff, or as amended.

Item	Commodities.	Application. From	Application. To	Rates in Cents per Ton of 2,000 Pounds.
150-A Cancels 150	**Bituminous Coal.** Minimum weight as shown in Item 100 of tariff, or as amended. (Route via Terre Haute, Ind.) (CC-1587.) (CC-1636.)	**Indiana Railroad.** Seeleyville....Ind. (Bob O'Link Mine)	**C. M. St. P. & P. R. R.**	
			Adeline....Ill.	♦200
			Almora....Ill.	190
			Bartlett....Ill. (Cook Co.)	190
			Bensenville....Ill.	190
			Bradt....Ill.	184
			Byron....Ill.	♦200
			Davis Junction...Ill.	♦200
			Elgin....Ill.	190
			Fairdale....Ill.	190
155-A Cancels 155			Florence....Ill.	202
			Forreston....Ill.	♦200
			Freeport....Ill.	♦212
			Genoa....Ill.	190
			Hammond's....Ill.	190
			Hampshire....Ill.	190
			Harper....Ill.	♦200
			Itasca....Ill.	190
			Kingston....Ill.	190
160-A Cancels 160			Kirkland....Ill.	190
			Leaf River....Ill.	♦200
			McQueen....Ill.	190
			Medinah....Ill.	190
			Monroe Center...Ill.	190
			New Lebanon...Ill.	190
			Nichols....Ill.	190
			Ontarioville....Ill.	190
			Pingree Grove...Ill.	190
165-A Cancels 165			Rockford....Ill.	♦212
			Roselle....Ill.	190
			Shannon....Ill.	202
			Spaulding....Ill.	190
			Starks....Ill.	190
			Stillman Valley..Ill.	♦200
			Wilkinson....Ill.	190
			Wooddale....Ill.	190

For explanation of abbreviations and reference marks, see pages 2 and 40 of tariff, or as amended.

Subject to Tariff of Increased Rates and Charges No. X-148, Agent B. T. Jones' I. C. C. No. 3659, Ind. R. C. No. D-693, C. T. C. No. 1801, C. I. & L. Ry. Freight Tariff No. 1607, supplements thereto or successive issues thereof.

Supplement No. 20 to
I. R. C. No. 3234
(Cancels Supplement No. 17)
Supplements Nos. 11, 15, 18, 19 and 20 contain all changes from the original tariff that are effective on the date hereof.

Supplement No. 20 to
I. C. C. No. 4724
(Cancels Supplement No. 17)
Supplements Nos. 11, 15, 18, 19 and 20 contain all changes from the original tariff that are effective on the date hereof.

Supplements Nos. 1 and 2 under suspension. Supplement No. 4—Suspension Notice—I. & S. 4840—Fine Coal, Ill., Ind. and Ky. to Twin Cities. Supplement No. 10 under postponement

Supplement No. 20 to
C. I. & L. Ry. Freight Tariff No. 408-D
(Cancels Supplement No. 17)
Supplements Nos. 11, 15, 18, 19 and 20 contain all changes from the original tariff that are effective on the date hereof.
Supplements Nos. 1 and 2 under suspension. Supplement No. 4—Suspension Notice—I. & S. 4840—Fine Coal, Ill., Ind. and Ky. to Twin Cities. Supplement No. 10 under postponement.

MONON ROUTE

Chicago, Indianapolis and Louisville Railway Company

(L. F. DeRamus and Holman D. Pettibone, Trustees)

IN CONNECTION WITH CARRIERS SHOWN IN SECTION No. 1 OF TARIFF, AS AMENDED

Stamp Date Received

and Station

LOCAL, JOINT AND PROPORTIONAL FREIGHT TARIFF

APPLYING ON

BITUMINOUS COAL, CARLOADS

FROM POINTS IN THE LINTON, INDIANA DISTRICT On The C. I. & L. Ry.

(As shown in Section No. 3 of tariff)

TO POINTS IN THE STATES OF

Illinois, Indiana, Iowa, Kansas, Kentucky (Northern Part), Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin and Wyoming

AND

Miscellaneous Rates on Bituminous Coal

FROM

Points on C. I. & L. Ry.

TO

Points on C. I. & L. Ry. and Connections

ALSO

Local Distance Rates on Bituminous Coal

Between Stations on C. I. & L. Ry. in Indiana

(See Item 70, Section 10 of tariff)

(See Item 70, Section 10 of tariff)

Governed, except as otherwise provided herein, by the Official Classification No. 59, issued by A. H. Greenly, Agent, I. C. C.-O. C. No. 59, I. R. C.-O. C. No. 59, C. I. & L. Ry. Freight Tariff No. 1405-N, by exceptions thereto, Freight Tariff No. 130-B, issued by B. T. Jones, Agent, I. C. C. No. 3684, Ind. R. C. No. D-698, C. I. & L. Ry. Freight Tariff No. 1501-S, by Rules and Regulations shown in Freight Tariff No. 515-D, issued by B. T. Jones, Agent, I. C. C. No. 3587, Ind. R. C. No. D-680, C. I. & L. Ry. Freight Tariff No. 1501-D, and by supplements to or successive issues of said publications.

ISSUED JUNE 27, 1942 **EFFECTIVE AUGUST 2, 1942**
(except as otherwise provided herein)

This supplement is issued under authority of Rule 9 (m) of Tariff Circular No. 20.

(72)Ex Parte 148 Increase in Rates and Charges supplement.

Departure from the terms of Rule 28(a) of Tariff Circular No. 20 is authorized under permission of the Interstate Commerce Commission No. 154301 of July 3, 1936.

For explanation of abbreviations, see Sections Nos. 1 and 6 of tariff, as amended.

J. R. VAN DELINDER,
General Freight Agent

F. W. KUHN,
General Freight Agent

J. L. FORTIER,
Assistant General Freight Agent

Issued by C. A. PFISTER,
Assistant General Freight Agent

C. I. & L. Ry. General Offices: Transportation Building, 608 South Dearborn St., Chicago, Ill.

(1900) (PACC-61) (Made in U. S. A.) (39970)

1652

Refer to pages 59, 60, 62, 69, 71, 72 and 97 of tariff, page 2 of Supplement No. 13 and page 4 of Supplement No. 18 and make the following changes:

SECTION No. 8
RATES ON BITUMINOUS COAL, CARLOADS, AS DESCRIBED IN SECTION No. 2, OF TARIFF

FROM POINTS IN THE LINTON DISTRICT ON THE CI&L
Shown in Section No. 3, of tariff
For Routing, See Sections Nos. 11 and 12, of tariff, as amended
RATES IN CENTS PER TON OF 2,000 POUNDS
For Minimum Weight, see Rule 6, Section No. 7, of tariff

Station Nos.	TO	RATES Lump	RATES Fine
	C&NW		
5813	Geneva Ill.	(55)♦194	(55)♦194
5815	La Fox Ill.		
5817	Elburn Ill.		
5819	Maple Park Ill.	♦194	♦194
5821	Cortland Ill.		
5823	De Kalb Ill.		
5825	Malta Ill.		
5827	Creston Ill.		
5829	Rochelle Ill.		
5831	Flagg Ill.		
5833	Ashton Ill.		
5835	Franklin Grove Ill.	♦199	♦199
5837	Nachusa Ill.		
5838	Dixon Ill.		
5839	Nelson (Lee Co.) Ill.		
5841	Sterling (Rock Falls) Ill.		
5873	Belvidere Ill.		
5875	Cherry Valley Ill.		
5877	Rockford Ill.		
5879	Winnebago Ill.	♦217	♦217
5881	Pecatonica Ill.		
5883	Ridott Ill.		
5884	Freeport Ill.		
5885	St. Charles Ill.	♦194	♦194
5919	Sycamore Ill	♦194	♦194
6003	[17]Clinton Jct Wis.		
6005	[17]Tiffany Wis.	(55)259	(55)259
6007	[17]Janesville Wis.		
6135	[17]Milton Jct Wis.		
6137	[17]Koshkonong Wis.	(55)263	(55)263
6139	[17]Ft. Atkinson Wis.		
6955	Roscoe Ill.	♦232	♦232
6957	Beloit Wis.	♦(55)232	♦(55)232
6959	[17]Afton Wis.	(55)259	(55)259
	CGW		
12713	St. Charles Ill.		
12717	Wasco Ill.		
12719	Lily Lake Ill.	♦194	♦194
12721	Virgil Ill.		
12723	Richardson Ill.		
	CGW —Concluded		
12727	Sycamore Ill.		
12729	De Kalb Ill.		
12731	Five Points Ill.	♦194	♦194
12733	Wilkinson Ill.		
12735	Clare Ill.		
12737	Esmond Ill.		
12739	Lindenwood Ill.		
12741	Holcomb Ill.		
12743	Stillman Valley Ill.		
12745	Byron Ill.	♦212	♦212
12747	Myrtle Ill.		
12749	Egan Ill.		
12751	German Valley Ill.		
12752	South Freeport Ill.		
	CMStP&P		
14221	Davis Junction Ill.		
14223	Stillman Valley Ill.		
14225	Byron Ill.		
14227	Leaf River Ill.		
14229	Adeline Ill.	♦205	♦205
14231	Forreston Ill.		
14233	Harper Ill.		
14235	Lanark Ill.		
14237	Fay Ill.		
14274	Rockford Ill.	♦217	♦217
14275	Camp Grant Ill.		
14279	Bradt Ill.	♦194	♦194
14280	De Kalb Ill.		
14295	Holcomb Ill.		
14296	Kings Ill.	♦212	♦212
14297	Flag Center Ill.		
14298	Rochelle Ill.	♦199	♦199
14299	Stewart Jct Ill.		
14300	Scarboro Ill.	♦195	♦195
14301	Roxbury Ill.		
14302	Welland Ill.		
14361	[17]Clinton Junction Wis.		
14363	[17]Porters Wis.	(55)(58)259	(55)(58)259
14365	[17]Morgan's Farm Wis.		
14367	[17]Perrigo Spur Wis.		
	CMStP&P —Concluded		
14369	Beloit Wis.	(55)♦232	(55)♦232
14372	[17]Afton Wis.	(53)(58)259	(53)(58)259
14373	Rockton Ill.		
14375	Roscoe Siding Ill.		
14377	Latham Park Ill.		
14383	Shirland Ill.		
14385	Durand Ill.	♦222	♦222
14387	Davis (Stephenson Co.) Ill.		
14389	Rock City Ill.		
14391	Dakota Ill.		
14393	Freeport Ill.		
14395	Florence Ill.	♦217	♦217
14397	Shannon Ill.		
14427	[17]Milton Junction Wis.	(53)(58)263	(53)(58)263
14501	[17]Janesville Wis.	(53)(58)259	(53)(58)259
	IC		
26388b	Baileyville Ill.	♦217	♦217
26389	Forreston Ill.		
26390	Haldane Ill.	♦212	♦212
26391	Polo Ill.		
26392	Woosung Ill.		
26393	North Dixon Ill.		
26394	Dixon Ill.	♦199	♦199
26395	Eldena Ill.		
26396	Amboy Ill.		
26457	Hart Ill.		
26459	Colvin Park Ill.	♦207	♦207
26461	Irene Ill.		
26463	Perryville Ill.		
26465	Rockford Ill.		
26467	Alworth Ill.		
26469	Seward Ill.	♦217	♦217
26471	Evarts Ill.		
26473	Freeport Ill.		

♦Denotes increase.
(55)Will not apply for delivery at St. Charles School for Boys. When for this delivery, rate will be $3.85 per car over rates published herein to Geneva, Ill.
(58)Applies only through Davis Junction, Ill.
(53)Issued in compliance with order of the Interstate Commerce Commission in Docket No. 25419.
[17]**Reissued** from Supplement No. 17, effective July 2, 1942.
For explanation of abbreviations, see Sections Nos. 1 and 6 of tariff, as amended.

RATES AND CHANGES PUBLISHED HEREIN ARE SUBJECT TO TARIFF OF INCREASED RATES AND CHARGES, No. X-148; ALTERNATE AGENT W.S.MERCER'S I.C.C.No.526, ILL.C.C.No.268, IND.R.C.No.136, SUPPLEMENTS THERETO OR SUCCESSIVE ISSUES THEREOF.

THIS SUPPLEMENT IS SUBJECT TO THE PROVISIONS OF SUPPLEMENT No. (70) 11 AND (70) 11-A TO C&EI FT 100-C, SUPPLEMENT (70) 11 TO I.C.C.No.2, SUPPLEMENT No. (70) 10 TO ILL.C.C.No.2 AND SUPPLEMENT No. (70) 2 TO I.R.C.No.2.

SUPPLEMENT NO.17
TO
ILL. C.C. No. 2
(SUPPLEMENTS Nos. (68) 5, 8, (70) 10, (72) 12, (68) 13, 16 AND 17 CONTAIN ALL EFFECTIVE CHANGES)

SUPPLEMENT NO.7
TO
I.R.C. No. 2
(SUPPLEMENTS Nos. (70) 2, (72) 3, 6 AND 7 CONTAIN ALL EFFECTIVE CHANGES)

SUPPLEMENT NO.18
TO
I.C.C. No. 2
(SUPPLEMENTS Nos. (68) 6, 9, (70) 11, (72) 13, (68) 14, 17 AND 18 CONTAIN ALL EFFECTIVE CHANGES)

C&EI

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

IN CONNECTION WITH PARTICIPATING CARRIERS SHOWN ON PAGES 3 AND 4 OF TARIFF, OR AS AMENDED

SUPPLEMENT NO.18

(SUPPLEMENTS Nos. (68) 6, 9, (70) 11, (70) 11-A, (72) 13, (68) 14, 17 AND 18 CONTAIN ALL EFFECTIVE CHANGES)

TO

FREIGHT TARIFF NO.100-C

OF

LOCAL, JOINT AND PROPORTIONAL RATES

ON

BITUMINOUS COAL, CARLOADS

(IN CENTS PER TON OF 2,000 POUNDS, EXCEPT AS OTHERWISE PROVIDED)

(FOR APPLICATION OF RATES, SEE ITEM 10)

FROM STATIONS ON THE

CHICAGO & EASTERN ILLINOIS RAILROAD
EVANSVILLE, SUBURBAN & NEWBURGH RAILWAY
INDIANA RAILROAD
AND
MISSOURI-ILLINOIS RAILROAD

TO STATIONS IN

ARKANSAS	KENTUCKY	MONTANA	TENNESSEE
COLORADO	LOUISIANA	NEBRASKA	TEXAS
ILLINOIS	MICHIGAN	NORTH DAKOTA	WISCONSIN
INDIANA	MINNESOTA	OHIO	AND
IOWA	MISSISSIPPI	OKLAHOMA	WYOMING
KANSAS	MISSOURI	SOUTH DAKOTA	

ALSO

LOCAL DISTANCE RATES

(APPLYING ON BITUMINOUS COAL, CARLOADS)

BETWEEN STATIONS ON THE

CHICAGO & EASTERN ILLINOIS RAILROAD

ISSUED JUNE 27, 1942.

EFFECTIVE AUGUST 2, 1942.
(EXCEPT AS OTHERWISE PROVIDED HEREIN)

ISSUED BY,

H. N. WASHER,
GENERAL COAL AGENT
McCORMICK BUILDING, 332 SOUTH MICHIGAN AVENUE, CHICAGO, ILLINOIS.

REFERENCE MARKS

(Reference marks are as shown on pages 67 and 68 of tariff, page 3 of Supplement No.9 and page 3 of Supplement 17, with the following additions and changes):

(HD) Issued in compliance with order of the Interstate Commerce Commission in Docket No.25419, dated March 3,1942, as amended.
(H2) Applies only via C&EIRR, Momence, Ill., NYCRR, Ladd, Ill., CMStP&PRR.

AMENDS PAGES 85,86,87,88,93,118,119,124,125,126,187,188,191 and 192 OF TARIFF, AS AMENDED, AS FOLLOWS:

Index	FROM GROUPS (See Page 5 of Tariff) / TO	SOUTHERN ILLINOIS		SPRINGFIELD		DANVILLE		BRAZIL-CLINTON		SULLIVAN		PRINCETON	
		(A)	(B)	(A)	(B)	(A)	(B)	(A)	(B)	(A)	(B)	(A)	(B)
	CHICAGO AND NORTH WESTERN RAILWAY - CONCLUDED												
	ROUTE VIA	A		A		A		A		A		A	
1506 1507 1508 1509 1510 1511	(2D) Geneva. . . . . .Ill. LaFox. . . . . .Ill. Elburn . . . . . .Ill. Maple Park . . . . .Ill. Cortland . . . . . .Ill. DeKalb . . . . . .Ill.	♦205		♦175		♦185		♦189		♦194		♦201	
1512 1513 1514 1515 1516 1517 1518	Malta. . . . . .Ill. Creston. . . . . .Ill. Rochelle . . . . . .Ill. Flagg. . . . . .Ill. Ashton . . . . . .Ill. Franklin Grove . . .Ill. Nachusa. . . . . .Ill.	♦205		♦+175 75		♦185		♦189		♦199		♦206	
1519 152 152	Dixon. . . . . .Ill. Nelson . . . . . .Ill. Sterling (Rock Falls). . . . . .Ill.	♦205		♦+175 †175		♦189		♦189		♦199		♦206	
1531 1532 1533 1534 1535	Gilberts . . . . . .Ill. Huntley. . . . . .Ill. Union. . . . . .Ill. Marengo. . . . . .Ill. Garden Prairie . . .Ill.	♣225		♣195		♣195		197		202		209	
1536 1537 1538 1539 1540 1541 1542	Belvidere. . . . . .Ill. Cherry Valley. . . .Ill. Rockford . . . . . .Ill. Winnebago. . . . . .Ill. Pecatonica . . . . .Ill. Ridott . . . . . .Ill. Freeport . . . . . .Ill.	♦225		♦195		♦195		♦212		♦217		♦224	
1543	(2S) St.Charles. . . . .Ill.	♦205		♦175		♦185		♦189		♦194		♦201	
1559	Sycamore . . . . . .Ill.	♦205		♦175		♦185		♦189		♦194		♦201	
2007	Roscoe . . . . . .Ill.	240		210		210		♦227		♦232		♦239	
2008	Beloit . . . . . .Wis.	♣(HD) 240		♣(HD) 210		♣(HD) 210		♦(HD) 227		♦(HD) 232		♦(HD) 239	
	CHICAGO GREAT WESTERN RAILROAD												

CHICAGO GREAT WESTERN RAILROAD							
	ROUTE VIA ☛	A	A	A	A	A	A
4206	St.Charles . . . . .Ill.	♦205	♦175	♦185	♦189	♦194	♦201
4207 4208 4209 4210	Wasco. . . . . .Ill. Lily Lake. . . . . .Ill. Virgil . . . . . .Ill. Richardson . . . . .Ill.	205	175	♦185	♦189	♦194	♦201
4212 4213	Sycamore . . . . . .Ill. De Kalb. . . . . .Ill.	♦205	♦175	♦185	♦189	♦194	♦201
4214	Five Points. . . . .Ill.	♦215	♦185	♦185	♦189	♦194	♦201
4215	Wilkinson. . . . . .Ill.	♦215	♦185	♦185	♦195	♦200	♦207
4216	Clare. . . . . .Ill.	♦220	♦190	♦190	♦207	♦212	♦219

FOR EXPLANATION OF REFERENCE MARKS, SEE PAGES 67 AND 68 OF TARIFF, PAGE 3 OF SUPP.9, PAGE 3 OF SUPP.17 AND PAGE 2 HEREIN.

FOR EXPLANATION OF ROUTES, SEE PAGES 287 THRU 296 OF TARIFF, PAGE 9 OF SUPP.9 AND PAGE 7 OF SUPP.17.

Index	FROM GROUPS ☛ (See Page 5 of Tariff) / TO ☚	SOUTHERN ILLINOIS		SPRINGFIELD		DANVILLE		BRAZIL-CLINTON		SULLIVAN		PRINCETON	
		Ⓐ	Ⓑ	Ⓐ	Ⓑ	Ⓐ	Ⓑ	Ⓐ	Ⓑ	Ⓐ	Ⓑ	Ⓐ	Ⓑ
	CHICAGO GREAT WESTERN RAILROAD - CONCLUDED												
	ROUTE VIA ☛	A		A,H		A		A		A		A	
4217 4218 4219 4220 4221 4222 4223 4224	Esmond . . . . . .Ill. Linderwood . . . . .Ill. Holcomb . . . . . .Ill. Stillman Valley . .Ill. Byron . . . . . .Ill. Myrtle . . . . . .Ill. Egan . . . . . .Ill. German Valley . . .Ill.	♦220		♦190		♦190		♦207		♦212		♦219	
	ROUTE VIA ☛	A		A		A		A		A		A	
4225	South Freeport . . .Ill.	♦220		♦190		♦190		♦207		♦212		♦219	
	CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD												
	ROUTE VIA ☛	D		D		D		D		D		D	
4620 4621 4622	Duffin . . . . . .Ill. Troxel . . . . . .Ill. Chase . . . . . .Ill.	♦205		♦175		180		184		189		196	
4623	De Kalb . . . . . .Ill.	♦205		♦175		♦185		♦189		♦194		♦201	
4624	Bradt . . . . . .Ill.	214		180		♦185		♦189		♦194		♦201	
4625 4626	Wilkinson . . . . .Ill. Nichols . . . . .Ill.	220		180		♦185		190		195		202	
	ROUTE VIA ☛	A,C,D		A,C,D		A,C,D		A,C,D		A,C,D		A,C,D	
4686 4687 4688 4689 4690 4691	Davis Jct . . . . .Ill. Stillman Valley . .Ill. Byron . . . . . .Ill. Leaf River . . . . .Ill. Adeline . . . . . .Ill. Forreston . . . . .Ill.	♦220		♦190		♦190		♦200		♦205		♦212	
4692	Harper . . . . . .Ill.	225		♦190		♦190		♦200		♦205		♦212	
4693 4694	Lanark . . . . . .Ill. Fay . . . . . .Ill.	225		♦190		195		♦200		♦205		♦212	
4711 4712 4713	Holcomb . . . . . .Ill. Kings . . . . . .Ill. Flag Center . . . .Ill.	♦220		♦190		♦190		♦207		♦212		♦219	
	ROUTE VIA ☛ (EXCEPT AS NOTED)	A,C,D		A,C,D		A,C,D		A,C,D		A,C,D		A,C,D	

		ROUTE VIA (EXCEPT AS NOTED)	A,C,D	A,C,D	A,C,D	A,C,D	A,C,D	A,C,D
4714	Rochelle. . . . . .Ill.							
4715	Steward Jct . . . .Ill.							
4716	Scarboro. . . . . .Ill.		♦232	♦202	♦202	♦207	♦212	♦219
4717	Roxbury . . . . . .Ill.					(B2) 202	(B2) 207	(B2) 214
4718	Welland . . . . . .Ill.							
4719	Mendota . . . . . .Ill.							
4720	Peterstown. . . . .Ill.							
4721	Fitchmoor . . . . .Ill.							
4722	Ladd. . . . . .Ill.							
4723	Cherry. . . . . .Ill.							
4724	Seatonville . . . .Ill.		♦232	♦202	♦202	♦207	♦212	♦219
4725	Rowe. . . . . .Ill.		(B2) 227	(B2) 197	(B2) 197	(B2) 197	(B2) 202	(B2) 209
4726	De Pue. . . . . .Ill.							
4727	Moronts . . . . . .Ill.							
4728	Granville . . . . .Ill.							
4729	Standard. . . . . .Ill.							
4730	Cedar Point . . . .Ill.							
4731	Oglesby . . . . . .Ill.							
		ROUTE VIA	A,C,D	A,C,D	A,C,D	A,C,D	A,C,D	A,C,D
4747	Beloit. . . . . .Wis.		(B1) 240	(B1) 210	(B1) 210	(B1) 227	(B1) 232	(B1) 239
4749	Rockton . . . . . .Ill.							
4750	Roscoe Siding . . .Ill.		♦240	♦210	♦210	♦217	♦222	♦229
4751	Latham Park . . . .Ill.							
4752	Rockford. . . . . .Ill.		♦225	♦195	♦195	♦212	♦217	♦224

FOR EXPLANATION OF REFERENCE MARKS, SEE PAGES 67 AND 68 OF TARIFF, PAGE 3 OF SUPP.9, PAGE 3 OF SUPP.17 AND PAGE 2 HEREIN.
FOR EXPLANATION OF ROUTES, SEE PAGES 287 THRU 296 OF TARIFF, PAGE 9 OF SUPP.9 AND PAGE 7 OF SUPP.17.

Index	FROM GROUPS ☛ (See Page 5 of Tariff) / TO ☚	SOUTHERN ILLINOIS		SPRINGFIELD		DANVILLE		BRAZIL-CLINTON		SULLIVAN		PRINCETON	
		Ⓐ	Ⓑ	Ⓐ	Ⓑ	Ⓐ	Ⓑ	Ⓐ	Ⓑ	Ⓐ	Ⓑ	Ⓐ	Ⓑ
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD - CONCLUDED													
	ROUTE VIA ☛	A,C,D		A,C,D		A,C,D		A,C,D		A,C,D		A,C,D	
4753 4754 4755 4756 4757	Shirland . . . . . .Ill. Durand . . . . . .Ill. Davis. . . . . .Ill. Rock City. . . . . .Ill. Dakota . . . . . .Ill.	♦240		♦210		♦210		♦217		♦222		♦229	
4758	Freeport . . . . . .Ill.	♦225		♦195		♦195		♦212		♦217		♦224	
4759 4760	Florence . . . . . .Ill. Shannon. . . . . .Ill.	♦225		♦195		♦195		♦212		♦217		♦224	
ILLINOIS CENTRAL RAILROAD													
	ROUTE VIA ☛	A		A		A		A		A		A	
9914 9915 9916 9917	Hart . . . . . .Ill. Colvin Park. . . . .Ill. Irene. . . . . .Ill. Perryville . . . . .Ill.	♦225		♦185		♦195		♦202		♦207		♦214	
9918	Rockford . . . . . .Ill.	♦225		♦195		♦195		♦212		♦217		♦224	
	ROUTE VIA ☛	B		B		A		A		A		A	
9919 9920 9921	Alworth. . . . . .Ill. Seward . . . . . .Ill. Evarts . . . . . .Ill.	♦225		♦195		♦195		♦212		♦217		♦224	
9922	Freeport . . . . . .Ill.	♦225		♦195		♦195		♦212		♦217		♦224	
9923	Eleroy . . . . . .Ill.	238		208		208		♦212		218		225	
10099	Baileyville. . . . .Ill.	♦225		♦195		♦212		♦212		♦217		♦224	
	ROUTE VIA ☛	B		B		D		D		D		D	
10100 10101 10102 10103	Forreston. . . . . .Ill. Haldane. . . . . .Ill. Polo . . . . . .Ill. Woosung. . . . . .Ill.	♦220		♦190		♦207		♦207		♦212		♦219	
10104 10105	North Dixon. . . . .Ill. Dixon. . . . . .Ill.	♦205		♦175		♦189		♦189		♦199		♦206	

FOR EXPLANATION OF REFERENCE MARKS, SEE PAGES 67 AND 68 OF TARIFF, PAGE 3 OF SUPP.9, PAGE 3 OF SUPP.17 AND PAGE 2 HEREIN.

FOR EXPLANATION OF ROUTES, SEE PAGES 287 THRU 296 OF TARIFF, PAGE 9 OF SUPP.9 AND PAGE 7 OF SUPP.17.

2903

1957

Subject to Tariff of Increased Rates and Charges No. X-148, Alternate Agent C. A. Spaninger's I. C. C. No. 765, Ill. C. C. No. 26, Ind. R. C. No. 17, supplements thereto or successive issues thereof.
This supplement is subject to the provisions of Supplement No. 23.

SUPPLEMENT No. 33
To
IND. R. C. No. C-443
Cancels
Supplement No. 32.
Supplements Nos. *a*2, *s*6, 8, 15, *d*16, *b*23, *c*25, 28, 29, *g*31 and 33 contain all changes from the original tariff.

SUPPLEMENT No. 34
To
ILL. C. C. No. C-278
Cancels
Supplement No. 33.
Supplements Nos. *a*2, *s*6, 8, 15, *d*16, *b*23, *c*25, *e*28, 29, *g*31, *f*32 and 34 contain all changes from the original tariff.

SUPPLEMENT No. 33
To
I. C. C. No. C-2230
Cancels
Supplement No. 32.
Supplements Nos. *a*2, *s*6, 8, 15, *d*16, *b*23, *c*25, 28, 29, *g*31 and 33 contain all changes from the original tariff.

SOUTHERN RAILWAY SYSTEM

FREIGHT TARIFF OF

SOUTHERN RAILWAY COMPANY

St. Louis-Louisville Divisions

IN CONNECTION WITH
PARTICIPATING CARRIERS NAMED ON PAGES A-3 AND A-4 OF TARIFF AND PAGE 2 OF SUPPLEMENTS Nos. 8, 15, 29 AND 31.

JOINT, EXPORT AND PROPORTIONAL RATES
ON
BITUMINOUS COAL, CARLOADS
ALSO
BITUMINOUS COAL BRIQUETTES, CARLOADS

SUPPLEMENT No. 33
TO
JOINT COAL TARIFF No. 809-G

Cancels
Supplement No. 32.
Supplements Nos. *a*2, *s*6, 8, 15, *d*16, *b*23, *c*25, *e*28, 29, *g*31, *f*+31A (Illinois) and 33 contain all changes from the original tariff.

a–Under Suspension.
b–Special Supplement. I. C. C. Service Order No. 68.
c–Special Supplement. I. C. C. Ex Parte No. 148.
d–Under Postponement.
e–Except portions under Suspension.
f–Suspension Supplement in Ill. C. C. Docket No. 30838.
g–Portions under Postponement.
s–Suspension Supplement in I. C. C.—I. & S. Docket No. 4840.
+Intrastate. (Not filed with I. C. C.).

FROM	TO POINTS IN THE STATES OF		
STATIONS AND MINES ON THE SOUTHERN RAILWAY IN ILLINOIS AND INDIANA ALSO FROM MINES ON THE ALGERS, WINSLOW AND WESTERN RY., EVANSVILLE & OHIO VALLEY RY., INC., AND EVANSVILLE, SUBURBAN & NEWBURGH RY.	ALABAMA	LOUISIANA	OHIO
	ARKANSAS	MICHIGAN	OKLAHOMA
	COLORADO	MINNESOTA	SOUTH CAROLINA
	ILLINOIS	MISSISSIPPI	SOUTH DAKOTA
	INDIANA	MISSOURI	TENNESSEE
	IOWA	MONTANA	TEXAS
	KANSAS	NEBRASKA	WISCONSIN
	KENTUCKY	NORTH DAKOTA	WYOMING

GOVERNED BY CLASSIFICATION, RULES AND REGULATIONS SHOWN IN TARIFF, AS AMENDED.

ISSUED JULY 1, 1942.

EFFECTIVE AUGUST 2, 1942.
(Except as otherwise provided herein.)

Departure from the terms of Rule 9(e) of Tariff Circular No. 20 is authorized under permission of the Interstate Commerce Commission, No. 7920 of March 17, 1942.

Departure from the terms of Rule 9(e) of Tariff Circular No. 3 is authorized under special permission of the Illinois Commerce Commission, No. R-12217 of April 10, 1942.

Issued by

W. M. KING,
Freight Traffic Manager.

A. W. GILL,
General Freight Agent,
307 East Fourth Street,
CINCINNATI, OHIO.

T. J. LOGAN,
Ass't General Freight Agent.

STATION TARIFF FILE No. 24.

1800-P-4404.
M. L. No. 2738.

Authority No. 61.
File 281-25419-ABA.
StL-GFO-4.

1658

POSTPONEMENT NOTICE.

(Reissued from Supplement No. 32, effective July 2, 1942.)

The effective date of rates bearing reference mark "31A", shown on pages 3, 4, 5, 6 and 7 of Supplement No. 31 to Southern Railway Company Joint Coal Tariff No. 809-G, I. C. C. No. C-2230, is hereby postponed from July 2, 1942, until September 2, 1942.

Rates named in tariff and effective supplements thereto will apply.

(Amends and cancels rates in Tariff, to corresponding Index Nos.)

RATES ON BITUMINOUS COAL, CARLOADS.

FROM STATIONS AND MINES IN ILLINOIS AND INDIANA (As Specified on Page A-5 of Tariff, as amended).

IN CENTS PER TON OF 2,000 POUNDS

Index No.	TO		FROM GROUP 1 Rates A (See Item 5)	FROM GROUP 1 Rates B (See Item 5)	FROM GROUP 1 Route No.	FROM GROUP 2 Rates A (See Item 5)	FROM GROUP 2 Rates B (See Item 5)	FROM GROUP 2 Route No.	FROM GROUP 3 Rates A (See Item 5)	FROM GROUP 3 Rates B (See Item 5)	FROM GROUP 3 Route No.
	Chicago and North Western Ry.										
2038	Geneva	Ill.	◆*b*195	◆*b*195	78	◆*b*204	◆*b*204	60	◆*b*201	◆*b*201	306
2039	La Fox	Ill.	◆195	◆195	78	◆204	◆204	60	◆201	◆201	306
2040	Elburn	Ill.	◆195	◆195	78	◆204	◆204	60	◆201	◆201	306
2041	Maple Park	Ill.	◆195	◆195	78	◆204	◆204	60	◆201	◆201	306
2042	Cortland	Ill.	◆195	◆195	78	◆204	◆204	60	◆201	◆201	306
2043	De Kalb	Ill.	◆195	◆195	78	◆204	◆204	60	◆201	◆201	306
2044	Malta	Ill.	◆195	◆195	78	◆209	◆209	60	◆206	◆206	60, 306
2045	Creston	Ill.	◆195	◆195	78	◆209	◆209	60	◆206	◆206	60, 306
2046	Rochelle	Ill.	◆195	◆195	78	◆209	◆209	60	◆206	◆206	60, 306
2047	Flagg	Ill.	◆195	◆195	78	◆209	◆209	60	◆206	◆206	60, 306
2048	Ashton	Ill.	◆195	◆195	78	◆209	◆209	60	◆206	◆206	60, 306
2049	Franklin Grove	Ill.	◆195	◆195	78	◆209	◆209	60	◆206	◆206	60, 306
2050	Nachusa	Ill.	◆195	◆195	78	◆209	◆209	60	◆206	◆206	60, 306
2051	Dixon	Ill.	◆195	◆195	78	◆209	◆209	60	◆206	◆206	60, 306
2052	Nelson	Ill.	◆195	◆195	78	◆209	◆209	60	◆206	◆206	306
2053	Sterling (Rock Falls)	Ill.	◆195	◆195	78	◆209	◆209	60	◆206	◆206	306
2063	Gilberts	Ill.	◆215	◆215	21	212	212	60	*e*209	*e*209	306
2064	Huntley	Ill.	◆215	◆215	21	212	212	60	*e*209	*e*209	306
2065	Union	Ill.	◆215	◆215	21	212	212	60	*e*209	*e*209	306
2066	Marengo	Ill.	◆215	◆215	21	212	212	60	*e*209	*e*209	306
2067	Garden Prairie	Ill.	◆215	◆215	21	212	212	60	*e*209	*e*209	306
2068	Belvidere	Ill.	◆215	◆215	78	◆227	◆227	60	◆*f*224	◆*f*224	306
2069	Cherry Valley	Ill.	◆215	◆215	78	◆227	◆227	60	◆224	◆224	306
2070	Rockford	Ill.	◆215	◆215	78	◆227	◆227	60	◆224	◆224	306
2071	Winnebago	Ill.	◆215	◆215	78	◆227	◆227	60	◆224	◆224	306
2072	Pecatonica	Ill.	◆215	◆215	78	◆227	◆227	60	◆224	◆224	306
2073	Ridott	Ill.	◆215	◆215	78	◆227	◆227	60	◆224	◆224	306
2074	Freeport	Ill.	◆215	◆215	78	◆227	◆227	60	◆224	◆224	306
2075	St. Charles	Ill.	◆195	◆195	78	◆204	◆204	60	◆201	◆201	306
2090	Sycamore	Ill.	◆195	◆195	78	◆204	◆204	60	◆201	◆201	306
	Chicago, Burlington & Quincy R. R.										
3253	Kings	Ill.	◆227	◆227	3						
3254	Holcomb	Ill.	◆227	◆227	3						
3255	Davis Junction	Ill.	◆227	◆227	3						
3256	New Milford	Ill.	◆232	◆232	3						
3257	Camp Grant	Ill.	◆232	◆232	3						
3258	Rockford	Ill.	◆232	◆232	3						

	Chicago, Burlington & Quincy R. R.										
3253	Kings	Ill.	◆227	◆227	3						
3254	Holcomb	Ill.	◆227	◆227	3						
3255	Davis Junction	Ill.	◆227	◆227	3						
3256	New Milford	Ill.	◆232	◆232	3						
3257	Camp Grant	Ill.	◆232	◆232	3						
3258	Rockford	Ill.	◆232	◆232	3						
	Chicago Great Western R. R.										
4602	St. Charles	Ill.	◆195	◆195	209	◆204	◆204	356	◆201	◆201	356
4604	Wasco	Ill.	195	195	209	◆204	◆204	356	◆201	◆201	356
4605	Lily Lake	Ill.	195	195	209	◆204	◆204	356	◆201	◆201	356
4607	Richardson	Ill.	195	195	209	◆204	◆204	356	◆201	◆201	356
4609	Sycamore	Ill.	◆195	◆195	209	◆204	◆204	356	◆201	◆201	356
4610	De Kalb	Ill.	◆195	◆195	209	◆204	◆204	356	◆201	◆201	356

b–Plus 385 cents per car on shipments for the St. Charles School for Boys.

e–Applies only from stations and mines on Southern Ry. Rate of 222 cents per ton of 2,000 pounds will apply from stations and mines on the A. W. & W. Ry.

f–Applies only from stations and mines on Southern Ry. Rate of ◆237 cents per ton of 2,000 pounds will apply from stations and mines on the A. W. & W. Ry.

For explanation of Abbreviations and other Reference Marks, see page 1 of Tariff, page 4 of Supplement No. 8, page 2 of Supplement No. 15, page 3 of Supplement No. 29 and page 2 of Supplement No. 31.

For explanation of Route Numbers, see pages 215 to 243, inclusive, of Tariff, as amended.

(Amends and cancels rates in Tariff, to corresponding Index Nos., except as otherwise provided.)

RATES ON BITUMINOUS COAL, CARLOADS—Continued.

FROM STATIONS AND MINES IN ILLINOIS AND INDIANA (As Specified on Page A-5 of Tariff, as amended).

IN CENTS PER TON OF 2,000 POUNDS

Index No.	TO		FROM GROUP 1 Rates A (See Item 5)	FROM GROUP 1 Rates B (See Item 5)	FROM GROUP 1 Route No.	FROM GROUP 2 Rates A (See Item 5)	FROM GROUP 2 Rates B (See Item 5)	FROM GROUP 2 Route No.	FROM GROUP 3 Rates A (See Item 5)	FROM GROUP 3 Rates B (See Item 5)	FROM GROUP 3 Route No.
	Chicago Great Western R. R. —Concluded.										
4611	Five Points	Ill.	◆205	◆205	209	◆204	◆204	356	◆201	◆201	356
4612	Wilkinson	Ill.	◆205	◆205	209	◆204	◆204	356	◆201	◆201	356
4613	Clare	Ill.	◆210	◆210	209	◆222	◆222	356	◆219	◆219	356
4614	Esmond	Ill.	◆210	◆210	209	◆222	◆222	356	◆219	◆219	356
4615	Lindenwood	Ill.	◆210	◆210	209	◆222	◆222	356	◆219	◆219	356
4616	Holcomb	Ill.	◆210	◆210	209	◆222	◆222	356	◆219	◆219	356
4617	Stillman Valley	Ill.	◆210	◆210	209	◆222	◆222	356	◆219	◆219	356
4618	Byron	Ill.	◆210	◆210	209	◆222	◆222	356	◆219	◆219	356
4619	Myrtle	Ill.	◆210	◆210	209	◆222	◆222	356	◆219	◆219	356
4620	Egan	Ill.	◆210	◆210	209	◆222	◆222	356	◆219	◆219	356
4621	German Valley	Ill.	◆210	◆210	209	◆222	◆222	356	◆219	◆219	356
4622	South Freeport	Ill.	◆210	◆210	209	◆222	◆222	356	◆219	◆219	356
	Chicago, Milwaukee, St. Paul and Pacific R. R.										
5037	Davis Junction	Ill.	◆210	◆210	39	◆215	◆215	31, 299	◆212	◆212	31, 299
5038	Stillman Valley	Ill.	◆210	◆210	39	◆215	◆215	31, 299	◆212	◆212	31, 299
5039	Byron	Ill.	◆210	◆210	39	◆215	◆215	31, 299	◆212	◆212	31, 299
a5040	Leaf River	Ill.	210	210	39	◆215	◆215	31, 299	◆212	◆212	31, 299
a5041	Adeline	Ill.	210	210	39	◆215	◆215	31, 299	◆212	◆212	31, 299
5042	Forreston	Ill.	◆220	◆220	39	◆215	◆215	31, 299	◆212	◆212	31, 299
5043	Harper	Ill.	◆220	◆220	39	◆215	◆215	31, 299	◆212	◆212	31, 299
5044	Lanark	Ill.	◆220	◆220	39	◆215	◆215	31, 299	◆212	◆212	31, 299
5045	Fay	Ill.	◆220	◆220	39	◆215	◆215	31, 299	◆212	◆212	31, 299
5067	De Kalb	Ill.				◆204	◆204	326	◆201	◆201	326
5081	Camp Grant	Ill.	◆215	◆215	39	◆227	◆227	31, 299	◆224	◆224	31, 299
5082	Holcomb	Ill.	◆210	◆210	39	◆222	◆222	31, 299	◆219	◆219	31, 299
5083	Kings	Ill.	◆210	◆210	39	◆222	◆222	31, 299	◆219	◆219	31, 299
5084	Flag Center	Ill.	◆210	◆210	39	◆222	◆222	31, 299	◆219	◆219	31, 299
5085	Rochelle	Ill.	◆210	◆210	39	◆222	◆222	31, 299	◆219	◆219	31, 299
5086	Steward Junction	Ill.	◆210	◆210	39	◆222	◆222	31, 299	◆219	◆219	31, 299
5087	Scarboro	Ill.	◆210	◆210	39	◆222	◆222	31, 299	◆219	◆219	31, 299
5088	Roxbury	Ill.	◆210	◆210	39	◆222	◆222	31, 299	◆219	◆219	31, 299
5089	Welland	Ill.	◆210	◆210	39	◆222	◆222	31, 299	◆219	◆219	31, 299
5090	Mendota	Ill.	◆210	◆210	39	◆222	◆222	31, 299	◆219	◆219	31, 299
5091	Peterstown	Ill.	◆210	◆210	39	◆222	◆222	31, 299	◆219	◆219	31, 299
5092	Fitchmoor	Ill.	◆210	◆210	39	◆222	◆222	31, 299	◆219	◆219	31, 299
5093	Ladd	Ill.	◆210	◆210	39	◆222	◆222	31, 299	◆219	◆219	31, 299
5094	Cherry	Ill.	◆210	◆210	39	◆222	◆222	31, 299	◆219	◆219	31, 299
5095	Seatonville	Ill.	◆210	◆210	39	◆222	◆222	31, 299	◆219	◆219	31, 299
5096	Howe	Ill.	◆210	◆210	39	◆222	◆222	31, 299	◆219	◆219	31, 299
5097	Depue	Ill.	◆210	◆210	39	◆222	◆222	31, 299	◆219	◆219	31, 299
5098	Moronts	Ill.	◆210	◆210	39	◆222	◆222	31, 299	◆219	◆219	31, 299
5099	Granville	Ill.	◆210	◆210	39	◆222	◆222	31, 299	◆219	◆219	31, 299
5100	Standard	Ill.	◆210	◆210	39	◆222	◆222	31, 299	◆219	◆219	31, 299
5101	Cedar Point	Ill.	◆210	◆210	39	◆222	◆222	31, 299	◆219	◆219	31, 299
5102	Oglesby	Ill.	◆210	◆210	39	◆222	◆222	31, 299	◆219	◆219	31, 299

a—Also amends page 5 of Supplement No. 29

For explanation of Abbreviations and other Reference Marks see page 1 of Tariff, page 4 of Supplement No. 8, page 2 of Supplement No. 15, page 3 of Supplement No. 29 and page 2 of Supplement No.

For explanation of Route Numbers, see pages 215 to 243, inclusive, of Tariff, as amended.

(Amends and cancels rates in Tariff, to corresponding Index Nos.)

RATES ON BITUMINOUS COAL, CARLOADS—Concluded.

FROM STATIONS AND MINES IN ILLINOIS AND INDIANA (As Specified on Page A-5 of Tariff, as amended).

IN CENTS PER TON OF 2,000 POUNDS

Index No.	TO	FROM GROUP 1 Rates A (See Item 5)	GROUP 1 Rates B (See Item 5)	GROUP 1 Route No.	GROUP 2 Rates A (See Item 5)	GROUP 2 Rates B (See Item 5)	GROUP 2 Route No.	GROUP 3 Rates A (See Item 5)	GROUP 3 Rates B (See Item 5)	GROUP 3 Route No.
	Chicago, Milwaukee, St. Paul and Pacific R. R.—Concluded									
5122	Rockton Ill.	◆230	◆230	39	◆227	◆227	359	◆*b*224	◆*b*224	359
5123	Roscoe Siding Ill.	◆230	◆230	39	◆227	◆227	359	◆*b*224	◆*b*224	359
5124	Latham Park Ill.	◆230	◆230	39	◆227	◆227	359	◆*b*224	◆*b*224	359
5125	Rockford Ill.	◆215	◆215	39	◆227	◆227	31, 299	◆*b*224	◆*b*224	31, 299
5126	Shirland Ill.	◆230	◆230	39	◆232	◆232	31, 299	◆229	◆229	31, 299
5127	Durand Ill.	◆230	◆230	39	◆232	◆232	31, 299	◆229	◆229	31, 299
5128	Davis Ill.	◆230	◆230	39	◆232	◆232	31, 299	◆229	◆229	31, 299
5129	Rock City Ill.	◆230	◆230	39	◆232	◆232	31, 299	◆229	◆229	31, 299
5130	Dakota Ill.	◆230	◆230	39	◆232	◆232	31, 299	◆229	◆229	31, 299
5131	Freeport Ill.	◆215	◆215	39	◆227	◆227	31, 299	◆224	◆224	31, 299
5132	Florence Ill.	◆215	◆215	39	◆227	◆227	31, 299	◆224	◆224	31, 299
5133	Shannon Ill.	◆215	◆215	39	◆227	◆227	31, 299	◆224	◆224	31, 299
	Illinois Central R. R.									
9830	Hart Ill.	◆215	◆215	54	◆217	◆217	33	◆214	◆214	33
9831	Colvin Park Ill.	◆215	◆215	54	◆217	◆217	33	◆214	◆214	33
9832	Irene Ill.	◆215	◆215	54	◆217	◆217	33	◆214	◆214	33
9833	Perryville Ill.	◆215	◆215	54	◆217	◆217	33	◆214	◆214	33
9834	Rockford Ill.	◆215	◆215	54	◆227	◆227	33	◆224	◆224	33
9835	Alworth Ill.	◆215	◆215	54	◆227	◆227	33	◆224	◆224	33
9836	Seward Ill.	◆215	◆215	54	◆227	◆227	33	◆224	◆224	33
9837	Evarts Ill.	◆215	◆215	54	◆227	◆227	33	◆224	◆224	33
9838	Freeport Ill.	◆215	◆215	54	◆227	◆227	33	◆224	◆224	33
9840	Baileyville Ill.	◆215	◆215	54	◆227	◆227	33	◆224	◆224	33
9841	Thurston Ill.	◆210	◆210	54	◆222	◆222	33	◆219	◆219	33
9842	Haldane Ill.	◆210	◆210	54	◆222	◆222	33	◆219	◆219	33
9843	Polo Ill.	◆210	◆210	54	◆222	◆222	33	◆219	◆219	33
9844	Woosung Ill.	◆210	◆210	54	◆222	◆222	33	◆219	◆219	33
9845	North Dixon Ill.	◆195	◆195	54	◆209	◆209	33	◆206	◆206	33
9846	Dixon Ill.	◆195	◆195	54	◆209	◆209	33	◆206	◆206	33
9847	Eldena Ill.	◆195	◆195	54	◆209	◆209	33	◆206	◆206	33
9848	Amboy Ill.	◆195	◆195	54	◆209	◆209	33	◆206	◆206	33

b—Applies only from stations and mines on the Southern Ry. Rate of ◆242 cents per ton of 2,000 pounds will apply from stations and mines on the A. W. & W. Ry.

For explanation of Abbreviations and other Reference Marks, see page 1 of Tariff, page 4 of Supplement No. 8, page 2 of Supplement No. 15, page 3 of Supplement No. 29 and page 2 of Supplement No. 31.

For explanation of Route Numbers, see pages 215 to 243, inclusive, of Tariff, as amended.

[fol. 2908] PETITIONERS' EXHIBIT No. 9

Order

Interstate Commerce Commission

Investigation and Suspension Docket No. 5139

Coal to Beloit, Wis., and Northern Illinois

No. 28881

Bituminous Coal Rates within Illinois

In the matter of postponing the effective date of order of July 9, 1945, in view of suits brought to set aside the same and in order to permit assembling of three-judge court for final hearing.

Present: Claude R. Porter, to whom the above-entitled matter has been assigned for action thereon.

Upon further consideration of the record in the above-entitled proceedings and of the request of plaintiffs' counsel in suits brought by Ayrshire Collieries Corporation et al., and Chicago, Milwaukee, St. Paul & Pacific Railroad Company, respectively, in the United States District Court for the Southern District of Indiana, to set aside said order, and in order to permit the assembling of a three-judge court for final hearing of said suits during the week of March 25, 1946, and good cause appearing therefor:

It is ordered, That the order entered in Investigation and Suspension Docket No. 5139 on July 9, 1945, to become effective November 16, 1945, upon notice as therein specified, since modified to become effective February 8, 1946, upon the same notice, be, and it is hereby, further modified so that it will become effective April 8, 1946, in lieu of February 8, 1946, upon like notice.

It is further ordered, That the order entered in No. 28881 on November 13, 1945, to become effective January 21, 1946, upon 30 days' notice, since modified to become effective February 8, 1946, upon the same notice, be, and it is hereby, modified so that it will become effective April 8, 1946, in lieu of February 8, 1946, upon like notice.

Dated at Washington, D. C., this 29th day of December, 1945.

By the Commission, Commissioner Porter.

W. P. Bartel, Secretary. (Seal)

A true copy: W. P. Bartel, Secretary of the Interstate Commerce Commission.

[fol. 2909] Petitioners' Exhibit No. 10

Order

Interstate Commerce Commission

Investigation and Suspension Docket No. 5139

Coal to Beloit, Wis., and Northern Illinois

No. 28881

Bituminous Coal Rates within Illinois

In the matter of postponing the effective date of order of July 9, 1945, in I. & S. No. 5139, and order of November 13, 1945, in No. 28881, in order to avoid necessity of preparing and filing tariffs by carriers prior to determination of pending Court case.

Present: Claude R. Porter, Commissioner, to whom the above matter has been assigned for action thereon.

Upon consideration of the record in the above entitled proceedings and of the request of plaintiff's counsel in suit of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, now pending in the United States District Court for the Southern District of Indiana praying that the order in I. & S. 5139 be set aside, and in order to avoid the necessity of the carriers subject to the orders in the two proceedings above-named preparing and filing tariffs prior to the determination of suits affecting said order, and good cause appearing therefor:

It is ordered, That the order entered in I. & S. Docket No. 5139 on July 9, 1945, to become effective November 16, 1945, upon notice as specified therein, since modified to become effective April 8, 1946, upon the same notice, be, and it is hereby, further modified so that it will become

effective May 8, 1946, upon thirty days' notice, said order to remain otherwise in full force and effect.

It is further ordered, That the order entered in No. 28881, on November 13, 1945, to become effective January 21, 1946, upon thirty days' notice, since modified to become effective April 8, 1946, upon the same notice be, and it is hereby, further modified so that it will become effective May 8, 1946, upon thirty days' notice, said order to remain otherwise in full force and effect.

Dated at Washington, D. C., this 28th day of February, 1946.

By the Commission, Commissioner Porter.

W. P. Bartel, Secretary. (Seal)

A true copy: W. P. Bartel, Secretary of the Interstate Commerce Commission.

[fol. 2910] Petitioners' Exhibit No. 11

Order

Interstate Commerce Commission
Investigation and Suspension Docket No. 5139
Coal to Beloit, Wis., and Northern Illinois

No. 28881

Bituminous Coal Rates within Illinois

In the matter of postponing the effective date of the order of July 9, 1945, in I. & S. No. 5139, and order of November 13, 1945, in No. 28881, in order to avoid necessity of carriers, filing tariffs prior to determination of pending Court cases.

Present: George M. Barnard, Chairman, to whom the above matter has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceedings and of the request of plaintiff's counsel in suit of Chicago, Milwaukee, St. Paul and Pacific Railroad Company and of counsel in the suit of Ayreshire Colleries Corp., both now pending in the United States District Court for the Southern District of Indiana praying that the order in I. & S. No. 5139 be set aside, and in order to avoid the nec-

essity of the carriers subject to the order in the two proceedings above-named preparing and filing tariffs prior to the determination of suits affecting said order, and it appearing that because of illness the Court will not be able to assemble to hear said cases at the time originally set, and good cause appearing therefor:

It is ordered, That the order entered in I. & S. Docket No. 5139 on July 9, 1945, to become effective November 16, 1945, upon notice as specified therein, since modified to become effective May 8, 1946, upon 30 days' notice, be, and it is hereby, further modified so that it will become effective July 8, 1946, upon 30 days' notice, said order to remain otherwise in full force and effect.

It is further ordered, That the order entered in No. 28881 on November 13, 1945, to become effective January 21, 1946, upon 30 days' notice, since modified to become effective May 8, 1946, upon 30 days' notice, be, and it is hereby, further modified so that it will become effective July 8, 1946, upon 30 days' notice, said order to remain otherwise in full force and effect.

Dated at Washington, D. C., this 21st day of March, 1946.

By the Commission, Chairman Barnard.

W. P. Bartel, Secretary. (Seal)

A true copy: W. P. Bartel, Secretary of the Interstate Commerce Commission.

[fol. 2911] In the Supreme Court of the United States,

October Term, A. D. 1946

No. 467

Statement of Points to be Relied Upon and Designation of the Parts of the Record to be Printed—Filed September 16, 1946

Come now Ayrshire Collieries Corporation, et al., and Chicago, Milwaukee, St. Paul and Pacific Railroad Company, appellants in the above entitled causes, and state the points upon which they intend to rely in this Court are as follows:

1. Two members of a statutory three-judge court convened to hear and determine an application to enjoin or

set aside an order of the Interstate Commerce Commission cannot determine such case when the third member of such court is unable to participate in the determination.

2. The order of the Commission requiring the carriers to remove unjust discrimination in the present rates from [fol. 2912] certain origins in Indiana is not supported by findings of fact or by evidence.

3. The order of the Commission requiring the carriers to remove undue preference and prejudice in the present rates from certain origins in Indiana is not supported by findings of fact or by evidence.

4. The order of the Commission requiring the carriers to remove unjust discrimination and undue preference and prejudice in the present rates from certain points in Indiana to destinations in Illinois was beyond the jurisdiction and authority of the Commission in the proceeding before it.

5. The decision and order of the Commission is arbitrary and capricious and beyond the power of the Commission.

6. The Chicago, Milwaukee, St. Paul and Pacific Railroad Company and the Southern Railway Company had the right to initiate and maintain such rates as those carriers deemed proper until such time as the Commission found, after full hearing, on the basis of substantial evidence, that such rates violated one or more provisions of the Interstate Commerce Act and made such finding in a proceeding instituted by an order of the Commission for an investigation and hearing concerning the lawfulness of such rates.

7. The report of the Commission contains no finding of fact to support the conclusion that the rates approved in said report to Rockford, Freeport or other destinations in northern Illinois, are reasonable, non-discriminatory and non-preferential and non-prejudicial.

8. The Commission has no authority or jurisdiction to require a change in the rates from the Boonville group in [fol. 2913] Indiana, or to approve rates for future application from that group, in the absence of findings of fact supported by evidence that the present or proposed rates

therefrom violate some provision of the Interstate Commerce Act.

9. The Commission had no authority to approve rates or rate relationships from a number of origin groups to a number of individual destinations, where such rates vary at the different destinations, and the relationships of the rates from such origin groups vary at such destinations, on the basis of the average of the rates from each group to all of the destinations.

The appellant, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, states that it will rely upon the following points, in addition to the foregoing:

1. The Court erred in failing to hold that a railroad has the right to initiate rates within a zone of reasonableness in order to meet competitive conditions and thus retain traffic it has enjoyed for many years.

2. The Court erred in refusing to set aside the Commission's report which contains no essential or appropriate findings that the rates proposed by appellant railroad and required by the Commission to be cancelled are unreasonable or otherwise unlawful.

3. The rates of a railroad can be condemned as discriminatory, prejudicial or preferential only when the carrier has effective control over the rate from the prejudiced point as well as from the preferred point, and the carrier must be given an alternative when required to remove discrimination, and the Court erred in failing and refusing to set aside the order which gave the appellant railroad no alternative.

[fol. 2914] II

Appellants further state that only the following parts of the record as filed in this Court are deemed necessary to be printed for the consideration of the points set forth above:

1. Petition of Ayrshire Collieries Corporation, et al., in Case No. 1072, omitting exhibits.

2. Petition of Chicago, Milwaukee, St. Paul and Pacific Railroad Company in Case No. 1076, omitting exhibits.

3. Designation of Honorable Evan A. Evans and Honorable Michael L. Igoe as Judges in Case No. 1072.

4. Proof of notice to Attorney General for the United States of America and the Interstate Commerce Commission of filing of petition in Case No. 1072.

5. Order entered January 3, 1946, in Case No. 1072 assigning the same for final hearing on March 25, 1946.

6. Designation of Honorable Evan A. Evans and Honorable Michael L. Igoe as Judges in Case No. 1076.

7. Proof of notice to Attorney General for the United States of America and to the Interstate Commerce Commission of filing of petition in Case No. 1076.

8. Order entered January 3, 1946 in Case No. 1076 assigning the same for final hearing on March 25, 1946.

9. Orders entered January 3, 1946, consolidating Cases Nos. 1072 and 1076 for all purposes.

10. Answers of United States of America in both cases.

11. Motions and petitions of Kentucky Coal Agency, Inc. to intervene as a defendant and orders permitting such intervention in both cases.

12. Motions and petitions of Railroad Commission of Kentucky to intervene as a defendant and orders granting [fol. 2915] such intervention in both cases.

13. Motions and petitions of The Alton Railroad Company (Henry A. Gardner, Trustee), et al., to intervene as defendants and orders granting such intervention in both cases.

14. Orders granting Interstate Commerce Commission leave to intervene as a defendant in both cases.

15. Answers of Interstate Commerce Commission as an intervening defendant in both cases.

16. Motions and petitions of Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau to intervene as parties defendant and order granting such intervention in both cases.

17. Orders entered March 21, 1946 in both cases, reassigning the same for trial on April 22, 1946.

18. Motions and petitions of Tecumseh Coal Company, et al., to intervene as defendants and orders granting such intervention in both cases.

19. Answers of Railroad Commission of Kentucky and Kentucky Coal Agency, Inc., intervening defendants, in both cases.

20. Motions and petitions of Belleville Fuels, Inc. and Fifth and Ninth Districts Coal Traffic Bureau to intervene

as parties defendant and order granting such intervention in both cases.

21. Designation of Honorable J. Earl Major, United States Circuit Judge, to sit as District Judge in both cases.

22. Submission for final hearing in both cases on April 22, 1946 before three-judge Court.

23. Findings of fact and conclusions of law and judgment entry of June 5, 1946, in both cases.

[fol. 2916] 24. Petition for appeal.

25. Assignment of errors.

26. Statement as to jurisdiction on appeal.

27. Order allowing appeal.

28. Appeal bonds.

29. Citation on appeal.

30. Notice to Attorney General of the State of Indiana.

31. Notice of appeal.

32. Notice under Rule 12 of the Rules of the Supreme Court.

33. Proof of service of citation on appeal.

34. Proof of service of notice of appeal and notice under Rule 12 of the Rules of the Supreme Court.

35. Praecipe for transcript of record.

36. Proof of service of notice of filing praecipe for transcript of record.

37. Praecipe designating additional portions of the record to be included in record on appeal filed by appellees, United States of America and Interstate Commerce Commission.

38. The following portion of the record of proceedings before the Interstate Commerce Commission in I. & S. Docket No. 5139, included in petitioners' Exhibits Nos. 1, 4, 5, 6 and 7 in the District Court:

(a) Included in Exhibit No. 1:

(1) Protest and request for suspension of coal Trade Association of Indiana, dated July 14, 1942.

(2) Order of Interstate Commerce Commission, dated July 30, 1942, suspending certain tariffs.

(3) Petition on behalf of Illinois Railroads dated August 12, 1942, filed with Interstate Commerce Commission [fol. 2917] August 15, 1942.

(4) Order of Interstate Commerce Commission in Docket No. 28881, dated September 9, 1942.

(5) Petition of Railroad Commission of Kentucky to intervene in I. & S. Docket No. 5139.

(6) Petition of Kentucky Coal Agency, Inc. to intervene in I. & S. Docket No. 5139.

(7) Report and order of Interstate Commerce Commission issued July 9, 1945.

(8) Order of Interstate Commerce Commission of October 5, 1945, extending effective date of order of July 9, 1945, to December 20, 1945.

(9) Order of Interstate Commerce Commission dated November 13, 1945, denying petitions for reconsideration filed by Coal Trade Association of Indiana and Chicago, Milwaukee, St. Paul and Pacific Railroad Company and extending effective date of order of July 9, 1945, to January 21, 1946.

(10) Order of Interstate Commerce Commission, dated December 6, 1945, extending effective date of order of July 9, 1945, to February 8, 1946.

(b) Included in Exhibits Nos. 4, 5, 6 and 7:

(1) The following pages of the transcript of testimony before the Commission:

Page 1 to page 5, inclusive;
Page 8 to and including line 20 on page 10;
Line 8, page 13, to and including line 10, page 15;
Line 20, page 18, to and including line 16, page 40;
Line 22, page 41, to and including line 24, page 47;
Line 2, page 51, to and including page 67;
[fol. 2918] Line 21, page 72, to and including line 10, page 89;
Line 3, page 92, to and including line 7, page 97;
Line 25, page 97, to and including page 98;
Line 10, page 99, to and including line 19, page 105;
Line 5, page 107, to and including line 21, page 107;
Line 25, page 109, to and including line 4, page 111;
Line 7, page 112, to and including line 11, page 112;
Line 21, page 116, to and including line 8, page 121;
Page 123 to and including line 1, page 135;
Line 7, page 136, to and including line 15, page 137;
Line 16, page 138, to and including page 139;
Line 4, page 141, to and including line 14, page 144;
Line 14, page 145, to and including line 13, page 161;

Line 18, page 163, to and including line 9, page 178;
Line 9, page 230, to and including line 19, page 252;
Page 256 to and including line 1, page 263;
Line 19, page 264, to and including line 14, page 280;
Line 23, page 344, to and including line 6, page 361;
Line 6, page 365, to and including page 366;
Line 13, page 370, to and including page 384;
Page 386 to and including line 22, page 388;
Line 18, page 390, to and including line 21, page 443;
Line 22, page 445, to and including line 15, page 449;
Line 6, page 451, to and including line 7, page 456;
Line 17, page 458, to and including page 480;
Page 482 to page 507, inclusive;
Line 3, page 509, to and including line 13, page 583;
Line 4, page 674, to and including line 23, page 703;
Line 16, page 705, to and including line 4, page 716;
Line 18, page 756, to and including line 3, page 889;
Page 891 to page 895, inclusive;
Line 5, page 912, to and including line 10, page 954;
Line 11, page 968, to and including page 1016;
[fol. 2919] Page 1018 to and including line 7, page 1076;
Line 3, page 1082, to and including line 10, page 1272;
Page 1308 to and including line 20, page 1371;
Page 1381 to page 1561, inclusive;
Line 25, page 1563, to and including page 1575;
Page 1576 to and including line 7, page 1674;
Page 1678 to and including line 14, page 1686;
Page 1689 to and including line 24, page 1705;
Line 2, page 1708, to and including line 10, page 1712;
Line 22, page 1713, to and including line 7, page 1726;
Line 21, page 1728, to and including line 2, page 1735;
Line 6, page 1736, to and including page 1765;
Line 25, page 1766, to and including line 23, page 1768;
Line 7, page 1770, to and including line 20, page 1842;
Line 25, page 1845, to and including page 1889;
Line 18, page 1891, to and including line 19, page 1892;
Page 1894 to and including line 22, page 1900;
Line 21, page 1902, to and including line 2, page 1920;
Line 24, page 1922, to and including line 4, page 1938;
Line 21, page 1940, to and including line 2, page 1999;
Line 17, page 2001, to and including page 2007;

[fol. 2920] Line 21, page 2011, to and including line 12, page 2038;

Page 2040 to and including line 12, page 2049;
Line 2, page 2051, to and including line 2, page 2052;
Line 9, page 2128 to and including page 2145;
Line 17, page 2162, to and including line 3, page 2171;
Page 2174 to and including line 21, page 2217;
Line 6, page 2220, to and including line 12, page 2223;
Line 9, page 2226 to and including page 2252;
Line 16, page 2253, to and including line 18, page 2287;
Line 18, page 2373, to and including line 19, page 2377;
Page 2380 to and including line 17, page 2455;
Page 2457 to and including line 9, page 2459;
Line 15, page 2461, to and including line 1, page 2467;
Page 2469 to and including line 4, page 2470;
Line 9, page 2476, to and including line 9, page 2510;
Line 16, page 2511, to and including page 2527;
Line 4, page 2534, to and including page 2577;
Page 2631 to page 2641, inclusive;
Line 7, page 2644, to and including page 2655;
Line 1, page 2657, to and including line 18, page 2657;
Line 3, page 2659, to and including line 10, page 2679;
[fol. 2921] Line 20, page 2697, to and including line 2, page 2700;
Line 9, page 2701, to and including line 18, page 2702;
Line 2, page 2705, to and including line 3, page 2852;
Line 18, page 2857, to and including line 27, page 2857.

(2) The following Exhibits introduced in evidence before the Commission: Exhibits Nos. 1, 2, 3, 3-A, 4, 4-A, 5, 6, 8 to 74, inclusive, 76 to 91, inclusive, 97 to 103, inclusive, and 106 to 118, inclusive.

39. All of the documents included in petitioners' Exhibits Nos. 8, 9, 10 and 11 in the District Court.

Dated September 14, 1946.

Earl B. Wilkinson, Orehart & Hay, Attorneys for Appellants, Ayrshire Collieries Corporation, et al.; Carson L. Taylor, William L. Hunter, Attorneys for Appellant, Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

[fol 2922] Due service and receipt of a copy of the foregoing statement of points to be relied upon and designation

of the parts of the record to be printed is hereby acknowledged this 16th day of September, 1946.

David O. Mathews, for United States of America; Nelson Thomas, Attorney for Interstate Commerce Commission; Erle J. Zoll, Jr., Attorney for The Alton Railroad Company (Henry A. Gardner, Trustee), and other intervening railroads; Charles W. Stadell, Attorney for Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau; J. C. Marks, Attorney for Kentucky Coal Agency, Inc.

[fol. 2923] [File endorsement omitted.]

[fol. 2924] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 467

DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD TO BE PRINTED—Filed September 25, 1946

The United States of America and Interstate Commerce Commission, appellees in the above-styled consolidated case, designate for printing, in addition to the portions of the record heretofore designated by appellants for printing, but without duplication, the following:

The entire record before the District Court, including pleadings and all evidence, including the complete record before the Interstate Commerce Commission, including exhibits received in evidence before the Commission.

[fol. 2925] This 24th day of September, 1946.

J. Howard McGrath, Solicitor General; Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission.

[fol. 2926] [File endorsement omitted.]

[fol. 2926-A] SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1946.

No. 467

ORDER NOTING PROBABLE JURISDICTION—October 21, 1946.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[fol. 2927] IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1946

STIPULATION AS TO PRINTED RECORD—Filed November 27, 1946.

It is hereby stipulated and agreed by and between the interested parties to the above entitled appeals, by their respective counsel, that in order to avoid the printing of exhibits of voluminous size and unwieldy dimensions contained in the record of the proceedings before the Interstate Commerce Commission, which constitutes a part of the record on appeal in the above entitled cases, the following described exhibits, designated as necessary for a consideration of the points involved in these appeals, need not be included in the printed record on appeal, but in lieu thereof this stipulation, which contains an accurate description of the nature and contents of each of said exhibits, shall be [fol. 2928] printed in the record:

Exhibit No. 1:

This exhibit is a map of the State of Illinois and parts of the States of Indiana and Kentucky, on which are outlined the coal mining origin groups in Illinois, Indiana and western Kentucky.

Exhibit No. 2:

This exhibit is a map of parts of the States of Indiana, Illinois, Iowa and Wisconsin, on which is outlined the destination territory involved in the proceedings before the Commission. Within the outlined territory are shown the existing and suspended rates from the Southern Illinois group to 12 representative destinations. The map also shows the present rates from the Southern Illinois group to 14 representative comparative points outside the outlined destination territory.

Exhibit No. 3:

This exhibit is divided into five sections, the contents of which are as follows:

Section I is a list of 12 representative destinations and the names of the railroads upon which they are located.

Section II is a list of the tariff coal origin groups and stations in Illinois (except the Northern Illinois district), Indiana and western Kentucky.

Section III is a statement indicating the number of times each origin point was used more than once in computing distances to each representative suspended and comparative destination.

[fol. 2929] Section IV is a statement of the average distance via short tariff routes from the Northern Illinois coal mining district to each representative suspended and comparative destination.

Section V is a statement of the average distance via short tariff routes from origin coal mining groups and stations in Illinois (except Northern Illinois), Indiana and western Kentucky to representative suspended and comparative destinations.

Exhibit 3-A:

This exhibit is a statement of certain corrections to be made in Exhibit No. 3.

Exhibit No. 4:

This exhibit is divided into eleven sections, the contents of which are as follows:

Section I is a statement of the history of the rates on bituminous coal from origin groups in Illinois, Indiana and western Kentucky to Beloit, Wisconsin, Chicago, Dixon,

Freeport and Rockford, Illinois, from January 1, 1910 (except as noted).

Section II is a statement showing the history of the rates on bituminous coal from origin groups in Illinois, Indiana and western Kentucky to Amboy, Apple River, Belvidere, Byron, DeKalb, Forreston, Geneva, Moline, Rock Island, Polo, Rochelle, Savanna and Sterling, Illinois, Burlington, Ft. Atkinson, Janesville, Lake Mills and Madison, Wisconsin, and Clinton, Davenport and Dubuque, Iowa, from August 1, 1930 (except as noted).

[fol. 2930] Section III is a statement showing distances via the shortest and longest (together with average) of the short tariff routes, the Holmes & Hallowell scale rates with percentages the proposed rates are of the Holmes & Hallowell scale rates and ton mile earnings from all origin groups in Illinois (except Northern Illinois), Indiana and western Kentucky to representative suspended destinations.

Section IV is a statement showing similar information as covered in Section III to the representative comparative destinations.

Section V is a statement showing similar information as covered in Section III from the mines in the Northern Illinois district to the representative suspended destinations.

Section VI is a statement showing similar information as covered in Section III from the mines in the Northern Illinois district to the representative comparative destinations.

Section VII is a consolidated statement showing similar information as covered in Section III from the Southern Illinois origin groups to all the representative suspended and comparative destinations.

Section VIII is a statement of the tonnage of the bituminous coal and revenue derived therefrom for the year 1941 and the first six months of 1942 from Illinois, Indiana and western Kentucky origins to representative destinations shown therein.

Section IX is a statement of tonnage of bituminous coal from mines in Illinois, Indiana and western Kentucky and eastern fields to Chicago, Illinois, Chicago District, [fol. 2931] Buffington, Gary, East Gary and South Gary, Indiana, for the years 1927 to 1941, both inclusive.

Section X is a statement showing reference to orders of the Interstate Commerce Commission in which rates to certain representative comparative destinations shown in Exhibit No. 3 have been prescribed or approved.

Section XI is a statement showing the anticipated revenue loss if rates to representative comparative destinations in southern Wisconsin were reduced to the same percentage of the Holmes & Hallowell scale rates that the present rates from Southern Illinois to Rockford, Illinois, are of the Holmes & Hallowell scale rates.

Exhibit 4-A:

This exhibit is a statement of certain corrections to be made in Exhibit No. 4.

Exhibit No. 5:

This exhibit is a statement of bituminous coal tonnage revenue for the year 1941 from mines in Illinois, Indiana and western Kentucky to representative suspended destinations in Illinois via intrastate and interstate routes, showing the increased annual revenue to representative suspended Illinois destinations, based on 1941 tonnage, if the suspended rates become effective, and showing the possible annual revenue loss if the rates to Beloit, Wisconsin, were reduced.

Exhibit No. 6:

This exhibit is a map of the State of Illinois and parts of the States of Indiana and Wisconsin, showing in [fol. 2932] different colors the principal routes of movement of coal from the Southern Illinois origin group to the representative suspended and comparative destinations.

Exhibit No. 8:

This exhibit is a statement showing the production and disposition of coal in net tons at mines in Northern Illinois having a railroad connection during the years 1937 to 1941, both inclusive.

Exhibit No. 9:

This exhibit is a statement showing the production and disposition of coal in net tons at mines shipping by rail, located in Fulton and Peoria Counties and at Victoria,

Alpha, Rushville and Atkinson, Illinois, during the years 1932 to 1941, both inclusive.

Exhibit No. 10:

This exhibit is a statement showing by years the number of net tons of bituminous coal shipped from mines in Illinois, Indiana and western Kentucky for the 10-year period January 1, 1932, to December 31, 1941, to various destinations in the States of Illinois, Iowa, Wisconsin, Missouri and Nebraska.

Exhibit No. 11:

This exhibit is a statement showing the average level of rates from all origin groups to representative suspended and comparative points, based on a recapitulation of the rates and distances shown in Exhibits Nos. 3 and 4, indicating the total rate, total distances, number of origins, average rate, average distance, the Holmes & Hallowell scale rate, and the percents the average present and suspended rates are of the Holmes & Hallowell scale rate.

[fol. 2933] Exhibit No. 12:

This exhibit contains the following:

1. A map of the State of Iowa and parts of the States of Illinois, Wisconsin and Minnesota, on which are shown the rate differentials between the Fulton County and Southern Illinois groups to Iowa and the representative destinations in Illinois, Minnesota and Wisconsin.

2. A statement of the rate differentials between the coal producing groups prescribed in I.C.C. Docket No. 26558, 232 I.C.C. 5.

3. A statement showing the maximum reasonable rates prescribed in I.C.C. Docket No. 26558 from the Fulton County and Southern Illinois districts to representative Iowa destinations; the differences in rates and distances Fulton County under Southern Illinois; and the Holmes & Hallowell and Midland Electric scale rates with the percents the prescribed rates are of those scale rates.

4. A statement showing the present and suspended rates from the Fulton County and Southern Illinois origin groups to representative suspended destinations in Illinois and representative comparative destinations in Illinois, Iowa and Wisconsin; the average distances via short tariff routes;

the differences in rates and distances Fulton County under Southern Illinois; and the Holmes & Hallowell, Midland Electric and I.C.C. Docket No. 23922 scale rates with percents the present and suspended rates are of those scale rates.

5. A statement showing the comparison of the proposed rates and average short tariff route distances from the [fol. 2934] Springfield, Illinois, and Brazil-Clinton, Indiana, groups to representative suspended Illinois destinations.

6. A statement showing a comparison of the rate and mileage differentials between the Brazil-Clinton and Linton-Sullivan, Indiana, origin groups.

7. A statement of articles taking Class "D" and Class "E" rating with column ratings prescribed by the Interstate Commerce Commission.

8. A statement showing the percentage relationship of the proposed bituminous coal rates to first class rates from selected coal origins in Illinois, Indiana and western Kentucky to suspended destinations in Illinois.

9. A statement showing the percentage relationship of the present bituminous coal rates to first class rates from selected coal origins in Illinois, Indiana and western Kentucky to comparative destinations in Illinois, Iowa and Wisconsin.

10. A statement showing the percentage relationship of bituminous coal rates to first class rates from the Inner Crescent group to representative destinations in Illinois.

11. A statement showing the percentage relationship of bituminous coal rates to first class rates from the Outer Crescent group to Wisconsin destinations.

12. A statement showing the minimum rates prescribed in 192 I.C.C. 413 on bituminous coal within Ohio and the percents such rates are of the Holmes & Hallowell scale rates.

[fol. 2935] 13. A statement showing the total production of bituminous coal in the United States for the years 1917 to 1941, inclusive, with a comparison of Illinois and Indiana production.

14. A list of manufacturing industries located at selected Illinois, Iowa and Wisconsin cities and the source of their fuel requirements.

Exhibit No. 13:

This exhibit is a statement showing various rate and distance scales prescribed by the Commission, including Ex Parte 115 increase but not including Ex Parte 148 increase.

Exhibit No. 14:

This exhibit is a statement showing the suspended rates on bituminous coal from Alpha, Victoria, Atkinson, Peoria, Rushville, Wilmington and Fulton County, Illinois districts to the representative suspended destinations; the average distance; and the Docket No. 19591 and Docket No. 23922 scale rates together with the percent the suspended rates are of those scale rates.

Exhibit No. 15:

This exhibit consists of a copy of Executive Order No. 9328, dated April 8, 1943, and a copy of President Roosevelt's statement upon the issuance of said Executive Order.

Exhibit No. 16:

This exhibit is a copy of the findings of the Public Service Commission of Wisconsin in the matter of investigation on motion of the Commission of intrastate freight rates charged by the railroad for the transportation of coal and [fol. 2936] coke within Wisconsin, Docket No. 2-R-633 and related cases, decided March 21, 1939.

Exhibit No. 17:

This exhibit contains the following:

1. A map of the States of Indiana and Illinois, showing the various mine groups that make up the Illinois-Indiana coal fields.

2. A map of the northern portion of the State of Illinois and the southern portion of the State of Wisconsin, showing the destination territory to which rates are under suspension.

3. A chronological statement of rates on coal from the Brazil-Clinton, Linton-Sullivan, Princeton-Ayrshire and Boonville groups to Beloit, Wisconsin, and Rockford, Illinois, with the rate differentials Linton over Brazil, Princeton over Linton, and Boonville over Princeton.

4. A statement of the present and suspended rates from the Linton-Sullivan and Princeton-Ayrshire groups to des-

tinations on the Chicago, Milwaukee, St. Paul & Pacific Railroad and the difference as between the Princeton and Linton groups.

5. A statement of the present and suspended rates from mines in the Linton-Sullivan and Princeton-Ayrshire groups to destinations on the Chicago & North Western Railway and the difference as between the Princeton and Linton groups.

6. A statement of the present and suspended rates from mines in the Linton-Sullivan and Princeton-Ayrshire groups to stations on the Illinois Central Railroad and the [fol. 2937] Chicago Great Western Railway and the difference as between the Princeton and Linton groups.

7. A statement of the present and suspended rates from the Linton-Sullivan and Princeton-Ayrshire groups to representative points in Wisconsin and Illinois, showing the rates published for account of the individual carriers serving the mine groups and the destination points.

8. A statement of the present and suspended rates from mines in the Southern Illinois and Princeton-Ayrshire groups to destinations on the Chicago, Milwaukee, St. Paul & Pacific Railroad and the differences between the Princeton and the Southern Illinois groups.

9. A statement of the present and suspended rates from mines in the Southern Illinois and Princeton-Ayrshire groups to stations on the Chicago & North Western Railway and the difference as between the Princeton and Southern Illinois groups.

10. A statement of the present and suspended rates on coal from mines in the Southern Illinois and Princeton-Ayrshire groups to stations on the Illinois Central Railroad and the Chicago Great Western Railway and the difference as between the Princeton and Southern Illinois groups.

11. A statement of the present and suspended rates from the Linton-Sullivan and Princeton-Ayrshire groups to representative destinations in Illinois and Wisconsin.

12. A chart showing the representative destinations in [fol. 2938] Wisconsin, Illinois and Iowa with the differentials Princeton over Linton.

13. A statement of the present rates from the Southern Illinois, Brazil-Clinton, Linton-Sullivan, Princeton-Ayrshire and Boonville groups to points in Illinois.

14. A statement of the present rates from the Southern Illinois, Brazil-Clinton, Linton-Sullivan, Princeton-Ayrshire and Boonville groups to points in Wisconsin.

15. A statement of the present rates from the Southern Illinois, Brazil-Clinton, Linton-Sullivan, Princeton-Ayrshire and Boonville groups to points in Iowa.

16. A chronological statement of rates from the Southern Illinois, Linton-Sullivan and Princeton-Ayrshire groups to Beloit, Wisconsin.

17. A chronological statement of rates from the Southern Illinois, Linton-Sullivan and Princeton-Ayrshire groups to Rockford, Illinois.

18. A chronological statement of rates from the Southern Illinois, Linton-Sullivan and Princeton-Ayrshire groups to Belvidere, Illinois.

19. A chronological statement of rates from the Southern Illinois, Linton-Sullivan and Princeton-Ayrshire groups to DeKalb, Illinois.

20. A chronological statement of rates from the Southern Illinois, Linton-Sullivan and Princeton-Ayrshire groups to Dixon, Illinois.

21. A chronological statement of rates from the Southern [fol. 2939] Illinois, Linton-Sullivan and Princeton-Ayrshire groups to Freeport, Illinois.

22. A chronological statement of rates from the Southern Illinois, Linton-Sullivan and Princeton-Ayrshire groups to St. Charles, Illinois.

23. A chronological statement of rates from the Southern Illinois, Linton-Sullivan and Princeton-Ayrshire groups to Sterling, Illinois.

24. A statement of the tariff authorities.

25. Excerpts from decisions of the Interstate Commerce Commission covering rates on coal in which it has been held that a group adjustment of long standing should not be disturbed.

Exhibit No. 18:

This exhibit is a diagram showing the various routes of movement of coal by the Chicago & Eastern Illinois Railroad Company from origins in Indiana and Illinois to Chicago, with the distances via such routes.

Exhibit No. 19:

This exhibit is a statement showing the number of miles of single and double track, whether the coal moved in solid trains or mixed with other freight, the number of break-up points, the maximum grades, the maximum curves, and engine rating of the locomotives used in the movement of coal by the Chicago & Eastern Illinois Railroad Company from certain destinations in Indiana and Illinois to Chicago, Illinois.

Exhibit No. 20:

This exhibit is a map of the State of Illinois and parts of the States of Indiana, Kentucky and Wisconsin, showing the [fol. 2940] boundaries and geographical location of each of the coal producing groups in Illinois, Indiana and western Kentucky and the location of the various representative and comparative destinations.

Exhibit No. 21:

This exhibit is a statement showing all destination points in the State of Illinois to which commodity rates on coal from mines in Illinois, Indiana and western Kentucky are under suspension, the origin and destination railroads over which such rates are published, together with present rates, the suspended rates and the amount of increase or decrease proposed by such suspended rates from the Southern Illinois rate group.

Exhibit No. 22:

This exhibit is a statement showing the name of each coal rate group in Illinois, Indiana and western Kentucky and the names of the railroads serving such groups; also the names of the railroads serving the points in northern Illinois to which changes are proposed in the present rates on coal from such groups as well as the names of the railroads serving representative comparative points.

Exhibit No. 23:

This exhibit is a statement showing the relative level of the present and suspended rates on bituminous coal as measured by the Midland Electric scale (232 I.C.C. 5) and the 23922 scale (190 I.C.C. 743) from Illinois, Indiana and western Kentucky to destinations in northern Illinois, southern Wisconsin, Davenport and Dubuque, Iowa.

Exhibit No. 24:

This exhibit is a statement showing the average ton [fol. 2941] mile earnings to representative destinations to which rates are under suspension; also to representative compared points from a composite of origin groups separated as between the Illinois groups, the Indiana groups, the western Kentucky group, the Indiana and western Kentucky groups combined, and the Illinois, Indiana and western Kentucky groups combined; likewise the percentage that the present and suspended rates are of the Midland Electric scale (Docket No. 26558) and the rates prescribed by the Commission in Docket No. 23922.

Exhibit No. 25:

This exhibit is a statement showing the average ton mile earnings to composite representative destinations to which rates are under suspension and representative compared points from composite origin groups separated as between the Illinois groups, the Indiana groups, the western Kentucky group, the Indiana and western Kentucky groups combined, and the Illinois, Indiana and western Kentucky groups combined; likewise the percentage that the present and suspended rates are of the Midland scale rate (Docket No. 26558, 252 I.C.C. 5).

Exhibit No. 26:

This exhibit is a graphic chart showing the comparative relative levels of the present and suspended rates on coal from the Illinois, Indiana and western Kentucky mines to 12 representative suspended points and the comparative relative levels of the present rates from such mines to 14 representative comparative points as measured by the ton mile earnings produced by such rates and the percentage such rates are of the Midland Electric scale (232 I.C.C. 5).

[fol. 2942] Exhibit No. 27:

This exhibit is a statement showing the tariff origin points located in the Southern Illinois, Springfield, Belleville, Danville, Centralia and DuQuoin origin groups and the distances via the shortest tariff routes from such origin points to representative suspended and comparative points; also a recapitulation of the rates and distances to representative suspended and comparative points from Alpha,

Victoria, Atkinson and Rushville, Illinois, and Northern Illinois, Fulton-Peoria, Southern Illinois, Springfield, Belleville, Danville, Centralia and DuQuoin groups.

Exhibit No. 28:

This exhibit is a statement showing the tariff origin points located in the Princeton-Ayrshire, Boonville, Linton-Sullivan, Brazil-Clinton and Evansville groups and points near Bedford, Indiana, and the distances via the shortest tariff routes from such points to representative suspended and comparative points.

Exhibit No. 29:

This exhibit is a statement showing the level of rates on coal from mines in Illinois and Indiana, based on shortest tariff route distances to 12 representative suspended points and 14 representative comparative points and the comparative relative levels of such rates as measured by the average ton mile earnings and the Midland Electric scale rates (232 I.C.C. 5).

Exhibit No. 30:

This exhibit is a series of 18 maps upon which are shown by means of colored lines extending from the mines or origin points in the Southern Illinois group to one or more of the representative suspended destinations the location [fol. 2943] of the present short tariff or shortest tariff routes from such mines or origins to such points and the location of suggested reasonable or practicable short tariff or shortest tariff routes.

Exhibit No. 31:

This exhibit is a statement showing the present rates on coal and the rates in effect on September 9, 1924, from the Southern Illinois group and the Wisconsin Lake Michigan docks to representative destinations in Wisconsin, the difference between the September 9, 1924, rates and the present rates and what the Southern Illinois group rates would be if based on the present rates from such docks plus the difference in effect on September 9, 1924.

Exhibit No. 32:

This exhibit is a statement showing the relative level of constructed freight rates on coal from mines in Illinois to

points in Wisconsin as compared with the Midland Electric scale rate and the Docket No. 23922 scale rate.

Exhibit No. 33:

This exhibit is a recapitulation of constructed rates from the Illinois groups to representative comparative points in the State of Wisconsin as shown in Exhibit No. 32 and of the present rates to representative comparative points in the States of Illinois and Iowa as shown on page 4 of Exhibit No. 24.

Exhibit No. 34:

This exhibit consists of the following:

1. A map of the State of Wisconsin and the northern [fol. 2944] Michigan peninsula showing the location of the various port cities on Lake Michigan and Lake Superior at which coal docks are located and certain representative points in Wisconsin.

2. Statements showing the rates on coal from Lake Michigan and Lake Superior docks to destinations in Wisconsin prior to May 1, 1939; the rates which became effective on May 1, 1939 and subsequent dates as a result of the order of the Public Service Commission of Wisconsin in Docket No. 2-R-633; the distances via tariff routes from such docks to representative destinations; and the percentage relationship that the present rates are of the 23922 scale rates.

Exhibit No. 35:

This exhibit is a statement showing average mileage over shortest tariff routes and the present large and fine coal rates from Lake Superior dock points to representative destinations in Minnesota and South Dakota.

Exhibit No. 36:

This exhibit is a statement showing the average mileage over the shortest tariff routes and the present large and fine coal rates from Lake Superior dock points to representative destinations in Iowa.

Exhibit No. 37:

This exhibit is a statement showing a recapitulation of the present rates on large and fine coal and the average distances over the shortest tariff routes from Lake Superior

docks to destinations in Minnesota and the percentage that such rates are of the Holmes & Hallowell scale rate.

[fol. 2945] Exhibit No. 38:

This exhibit is a statement showing a recapitulation of rates and distances shown in Exhibits Nos. 35 and 36 and the percentage relationship that such rates are of the Midland scale rate.

Exhibit No. 39:

This exhibit is a map on which is indicated the destination territory involved in the proceeding before the Interstate Commerce Commission and certain representative points in such territory.

Exhibit No. 40:

This exhibit is a statement showing the present and proposed rates from the Indiana and Illinois groups and the average rates from such groups to certain representative destinations.

Exhibit No. 41:

This exhibit is a statement showing the distances via short tariff routes from the Indiana groups to representative destinations in northern Illinois and Beloit, Wisconsin.

Exhibit No 42:

This exhibit is a statement showing distances via short tariff routes from the Illinois groups to representative points in northern Illinois and Beloit, Wisconsin.

Exhibit No. 43:

This exhibit is a statement showing the points of origin on each origin railroad in the Illinois and Indiana groups.

Exhibit No. 44:

This exhibit is a statement showing distances via the [fol. 2946] short tariff routes from each Indiana group to representative destinations and a composite of the Indiana groups.

Exhibit No. 45:

This exhibit is a statement showing the composite average rates via the short tariff routes from all the Illinois

groups to each representative destination and to a composite of all representative destinations.

Exhibit No. 46:

This exhibit is a statement showing the composite average distance via short tariff routes and the present and proposed rates from Southern Illinois and the Indiana groups to representative destinations.

Exhibit No. 47:

This exhibit is a statement showing the average distance via short tariff routes from the Southern Illinois and the Indiana groups and a composite of the Indiana groups to the representative destinations; also the difference in distance the Indiana groups are over or under Southern Illinois.

Exhibit No. 48:

This exhibit is a map of the States of Illinois, Wisconsin, Iowa, Minnesota, Nebraska, South Dakota and North Dakota on which are shown the destination territories and the actual rate differentials Brazil-Clinton, Linton-Sullivan, Princeton-Ayrshire and Boonville under Southern Illinois.

Exhibit No. 49:

This exhibit is a statement of the short tariff route distances from Southern Illinois and each of the Indiana groups to points in Minnesota, Iowa and Wisconsin used [fol. 2947] as representative by the Commission in 204 I.C.C. 255 as compared with 12 selected destinations in Illinois and Beloit, Wisconsin, and the difference in distance Indiana over or under Southern Illinois.

Exhibit No. 50:

This exhibit is a map of the northern portion of Illinois showing the involved destination territory on which is indicated by colors the prior, present and proposed differential relationship between the Brazil-Clinton and Southern Illinois groups.

Exhibit No. 51:

This exhibit is a statement showing the rates from the Southern Illinois, Springfield and Brazil-Clinton groups to representative destinations in effect on July 19, 1925, in

1930 to 1932, at present, and as proposed and the differential relationship in effect between those groups on those dates.

Exhibit No. 52:

This exhibit is a statement showing the rates prior to the I. & S. Docket No. 4368 adjustment, the proposed and approved rates under I. & S. Docket No. 4368, the present and proposed rates from the Southern Illinois and Indiana groups to representative northern Illinois destinations and Beloit, Wisconsin, and the differentials in such rates the Indiana groups versus Southern Illinois.

Exhibit No. 53:

This exhibit is a statement showing the difference in distance via short tariff routes and the differential in the present and proposed rates Indiana groups versus Southern Illinois to certain representative destinations and to a composite of all such destinations.

[fol. 2948] Exhibit No. 54:

This exhibit is a statement showing the Docket No. 23922, Docket No. 26558 and Holmes & Hallowell scales prescribed by the Interstate Commerce Commission.

Exhibit No. 55:

This exhibit is a statement showing the present and proposed rates from the Southern Illinois group and a composite of the Indiana groups to representative destinations and the percents such rates are of the various scales.

Exhibit No. 56:

This exhibit is a statement showing the present and proposed rates from the Southern Illinois and Brazil-Clinton groups to representative destinations and the percents such rates are of the various scales.

Exhibit No. 57:

This exhibit is a statement showing the average present and proposed rates from a composite of the Indiana groups and a composite of the Illinois groups and the percents such rates are of the various scales.

Exhibit No. 58:

This exhibit is a statement showing the average present and proposed rates from a composite of the Indiana groups and a composite of the Illinois groups to representative destinations and the revenue per ton mile and per car mile under such rates.

Exhibit No. 59:

This exhibit is a statement showing the present and proposed rates from Southern Illinois and a composite of the Indiana groups to representative destinations and the revenue per ton mile and per car mile under such rates.

[fol. 2949] Exhibit No. 60:

This exhibit is a statement showing the present and proposed rates from the Southern Illinois and Brazil-Clinton groups to representative destinations and the revenue per ton mile and per car mile under such rates.

Exhibit No. 61:

This exhibit is a statement showing the present and proposed rates from the Brazil-Clinton, Linton-Sullivan, Princeton-Ayrshire and Southern Illinois groups on the Chicago & Eastern Illinois Railroad and the New York Central Railroad and the percents such rates are of the various scales.

Exhibit No. 62:

This exhibit is a statement showing the present and proposed rates from the Brazil-Clinton, Linton-Sullivan, Princeton-Ayrshire and Southern Illinois groups on the Chicago & Eastern Illinois Railroad and the New York Central Railroad and the per ton mile and per car mile revenue under such rates.

Exhibit No. 63:

This exhibit is a statement showing the longest haul and shortest haul via the short tariff routes from the Springfield, Southern Illinois and Indiana groups to representative destinations.

Exhibit No. 64:

This exhibit is a statement showing the present and proposed rates to Rockford, Illinois, and Beloit, Wisconsin,

from all the Illinois, Indiana and western Kentucky groups, the amount of increase and the present and proposed differentials.

Exhibit No. 65:

This exhibit is a statement showing the rates from origins [fol. 2950] in Illinois, Indiana and western Kentucky to Beloit, Wisconsin, in effect prior to the original order of the Commission in Docket No. 25419, the rates published in compliance with the order in that case effective October 27, 1933, and the rates in effect to Rockford, Illinois, at that time.

Exhibit No. 66:

This exhibit is a statement showing the present and proposed rates from the Indiana groups and from the Southern Illinois and Springfield groups to Beloit, Wisconsin, and affected Illinois points and the amount of increase proposed from each group.

Exhibit No. 67:

This exhibit is a statement showing the present and proposed rates from the Southern Illinois group and the Indiana groups to Beloit, Wisconsin, and affected points and the present and proposed differentials Indiana groups under Southern Illinois.

Exhibit No. 68:

This exhibit is a statement showing the present and proposed rates from the Indiana groups to Beloit, Wisconsin, and the present and proposed differential the other groups are over the Brazil-Clinton base group.

Exhibit No. 69:

This exhibit is a statement showing the distances via the short tariff routes to Beloit, Wisconsin, from the Southern Illinois group and the Indiana groups, the difference in distance Indiana groups under Southern Illinois, the present and proposed rates and the present and proposed rate differentials Indiana groups under Southern Illinois.

Exhibit No. 70:

This exhibit is a statement showing the distances via [fol. 2951] short tariff routes to Beloit, Wisconsin, from

the Southern Illinois and Springfield groups, the difference in distance Springfield under Southern Illinois, the present and proposed rates and the present and proposed rate differentials.

Exhibit No. 71:

This exhibit is a statement showing the distances and the present and proposed rates from the Indiana groups and the Southern Illinois group on the Chicago & Eastern Illinois Railroad and the New York Central Railroad, the percents such rates are of the various scales and the earnings per ton mile and per car mile under the present and proposed rates.

Exhibit No. 72:

This exhibit is a statement showing the rates that would obtain from the Indiana groups to representative destinations and to a composite of the representative destinations based on the standard differentials between the Indiana groups and the Illinois groups.

Exhibit No. 73:

This exhibit is a statement based on mileages and rates used by the carriers in their Exhibits Nos. 3 and 4, showing the distance via the short tariff routes from a composite of the Illinois groups compared with a composite of the Indiana groups to a composite of the representative destinations used by the carriers, the average present and proposed rates and the percents such rates are of the various scales.

Exhibit No. 74:

This exhibit is a statement based on the mileages and rates used by the carriers in their Exhibits Nos. 3 and 4 [fol. 2952] showing the composite distances via the short tariff routes from the Indiana groups and the Illinois groups to the representative destinations used by the carriers, the average proposed Illinois rates and the average Indiana rates based on the standard differentials and the percents such rates are of the various scales.

Exhibit No. 76:

This exhibit consists of the following:

1. A statement showing the rates effective August 20, 1930, the present and suspended rates and the increases or decreases in such rates since August 20, 1930, from the Belleville group and the Indiana groups to Freeport and Rockford, Illinois.

2. A comparative statement of the present and proposed rates from the Belleville group to Rockford and Freeport, Illinois, and from the Indiana groups to certain points in northern Illinois.

3. A statement showing the average short tariff distances, average suspended rates, differences in rates, the Docket No. 26558 scale rates and percents of such scale from the Belleville, Southern Illinois, Princeton and Boonville groups to representative suspended destinations shown in the carriers' Exhibit No. 11 and from the Belleville, Southern Illinois, Linton-Sullivan, Princeton-A. rshire and Boonville groups to Dixon, Illinois.

Exhibit No. 77:

This exhibit is a statement showing the mileages via short tariff and shortest tariff routes and rates on coal from the Northern Illinois producing district to certain destinations [fol. 2953] in northern Illinois to which proposed increases in rates are under suspension.

Exhibit No. 78:

This exhibit is a statement showing mileages via short tariff and shortest tariff routes and rates on coal from the Northern Illinois producing district to certain destinations in Illinois, Iowa and Wisconsin.

Exhibit No. 79:

This exhibit is a statement showing mileages via short tariff and shortest tariff routes and rates on coal from the Fulton-Peoria producing district to certain destinations in northern Illinois to which proposed increases in rates are under suspension.

Exhibit No. 80:

This exhibit is a statement showing a comparison of the mileages used by the carriers and intervenor, Middle States

Fuels, Inc., from the Fulton-Peoria district to affected points.

Exhibit No. 81:

This exhibit is a statement showing mileages via short tariff and shortest tariff routes and rates on coal from the Fulton-Peoria producing district to various destinations in Illinois, Iowa and Wisconsin.

Exhibit No. 82:

This exhibit is a statement showing the present and proposed rates and the amount of increase or decrease (without Ex Parte 148 increases) from the Fulton-Peoria district to all destinations in northern Illinois to which changes are proposed.

Exhibit No. 83:

This exhibit consists of the following:

[fol. 2954] 1. Copy of the statement of the Interstate Commerce Commission in I. & S. Docket No. 2346, dated April 23, 1925.

2. A map on which is shown the present differential adjustment as between the Fulton-Peoria and Southern Illinois groups to Illinois, Iowa and Minnesota destinations.

3. A statement of the history of the rates on coal from the Northern Illinois, Fulton-Peoria, Southern Illinois and Brazil-Clinton groups to Beloit, Wisconsin, and Rockford, Illinois, from July 19, 1925, to date.

Exhibit No. 84:

This exhibit is a statement showing a comparison of the average revenue received per car and per car mile on bituminous coal with various commodities between the Fulton-Peoria group and Beloit, Wisconsin.

Exhibit No. 85:

This exhibit is a statement showing various analyses of the rates and mileages from the Fulton-Peoria group and Atkinson and Victoria, Illinois, to destinations in Illinois in the suspended or affected territory and to Beloit, Wisconsin, compared with the rates and mileages to Wisconsin,

Illinois, Iowa, etc., and with rates from other Illinois origin groups.

Exhibit No. 86:

This exhibit is a statement showing the average mileages and rates to suspended destinations in Illinois as compared with the average mileages and rates to compared points in Wisconsin from the Fulton-Peoria and other producing districts in Illinois based on the mileages used by the car-
[fol. 2955] riers in Exhibit No. 3.

Exhibit No. 87:

This exhibit is a statement showing certain errors in the carriers' Exhibit No. 11 respecting rates and mileages from the Fulton County group to suspended destinations and what the average mileage would be if the carriers had used the going rate for figuring mileage from all the Fulton-Peoria district, including Alpha, Atkinson, Victoria and Peoria.

Exhibit No. 88:

This exhibit is a statement showing the average proposed rates and the average short tariff route distance from origin groups in Illinois, Indiana and western Kentucky to representative suspended destinations compared with representative comparative rates and showing the amount in percentage the suspended rates are lower than the compared rates.

Exhibit No. 89:

This exhibit is a statement showing the rates and differentials or differences in rates western Kentucky compared to Southern Illinois, Central Illinois compared to Southern Illinois, Indiana compared to Southern Illinois, and Rich Hill, Missouri, compared to Pittsburg, Kansas, and Spadra, Arkansas, with accompanying maps.

Exhibit No. 90:

This exhibit is a statement showing the comparison of the present rates from the Fulton-Peoria district to Beloit, Wisconsin, with the level of rates in effect from the Head-of-the-Lakes to Minnesota, Iowa, South Dakota in Holmes & Hallowell territory.

[fol. 2956] Exhibit No. 91:

This exhibit is a statement showing the distances via short tariff routes and the rates from origins in the Southern Illinois group to Portage and Wausau, Wisconsin.

Exhibit No. 97:

This exhibit is a statement showing the short tariff route distances from the Southern Illinois group and from the Indiana groups to points in the States of Minnesota, Iowa and Wisconsin used by Witness Scott in Exhibit No. 46 as compared with 12 representative suspended points in northern Illinois.

Exhibit No. 98:

This exhibit is a statement showing a comparison of the rates on coal from the Southern Illinois group to Rockford, Illinois, with the rates from the Princeton-Ayrshire, Boonville and western Kentucky groups to destinations in Illinois.

Exhibit No. 99:

This exhibit is a statement showing the number of tons of coal shipped from the Illinois mines and from the Indiana mines during the years 1936 and 1941 to Beloit, Wisconsin, and to 7 representative points in northern Illinois.

Exhibit No. 100:

This exhibit is a statement showing the number of tons of coal shipped from all mines in Illinois and all mines in Indiana and from the mines in the various Illinois and Indiana producing groups to all destinations in Indiana, except those in the Chicago Switching District, during the years 1923 to 1941, both inclusive.

Exhibit No. 101:

This exhibit is a statement showing the number of tons [fol. 2957] of coal shipped from the individual producing groups in Illinois, Indiana and western Kentucky to various destination territories during the years 1923 to 1941, inclusive, the percent of the tonnage shipped each year was of the 1923 tonnage and the per cent that the tonnage shipped from the individual Indiana and Illinois groups was of the total shipped from such states.

Exhibit No. 102:

This exhibit is a statement showing the present and suspended rates on coal from the Springfield, Southern Illinois and Indiana groups to 12 representative suspended points in northern Illinois, the rates proposed by Witness Scott in Exhibit No. 72 and the amount of increase or reduction that would result from the establishment of the suspended rates and such proposed rates, together with the average shortest tariff route mileages from such groups.

Exhibit No. 103:

This exhibit is a statement showing a comparison of the progression of the Holmes & Hallowell scale with the progression of other basic scales, most of which have been prescribed by the Interstate Commerce Commission in recent decisions.

Exhibit No. 106

This exhibit is a statement showing the number of tons of coal produced by all types of mines and the total number of tons of coal produced by the hand-loaded, machine-loaded and strip mines in Illinois and Indiana for certain periods during the years 1936 to 1942, the weighted average producing cost and weighted average producing administrative and selling cost per ton for all mines in such districts.

[fol. 2958] Exhibit No. 107:

This exhibit is a statement showing the rates on coal from the Southern Illinois, Princeton-Ayrshire, Brazil-Clinton and Linton-Sullivan groups to representative points in northern Illinois to which increased rates are under suspension effective on August 25, 1920 and July 19, 1925, together with the amount of increase over the August 25, 1920 rates:

Exhibit No. 108:

This exhibit is a map of the State of Illinois on which are shown by means of colored lines the present short tariff route from the origin point of Junction, Illinois, in the Southern Illinois group, on the B. & O. Railroad, to Ladd, Illinois, and a suggested reasonable or practicable short tariff route from said origin to said destinations.

Exhibit No. 109:

This exhibit is a statement showing the rates on coal and the distances via shortest tariff routes from the Southern Illinois group to destinations in the State of Wisconsin.

Exhibit No. 110:

This exhibit is a statement showing the rates on coal and the distances via shortest tariff routes from the Fulton-Peoria group to destinations in the State of Wisconsin.

Exhibit No. 111:

This exhibit is a statement showing a recapitulation of the rates and distances shown in Exhibits Nos. 109 and 110.

[fol. 2959] Exhibit No. 112:

This exhibit is a statement showing the distances via short circuit routes to Beloit, Wisconsin, from tariff origin points in the Southern Illinois group.

Exhibit No. 113:

This exhibit is a statement showing the distances via short circuit routes to Beloit, Wisconsin, from tariff origin points located in the Fulton-Peoria group.

Exhibit No. 114:

This exhibit is a statement showing the number of origin points in each of the Illinois and Indiana groups, the total rates and the average rate from each group to 13 destination points as shown in Exhibits Nos. 41 and 42.

Exhibit No. 115:

This exhibit is a statement showing the names of each of the coal producing companies and the mines which were in operation in Fulton, Henry, Will and Knox Counties in Illinois during the years 1925 and 1926 and the number of tons of coal produced by each of such mines during each of such years.

Exhibit No. 116:

This exhibit is a statement showing the names of each of the major coal producing companies and the mines operated by them in Fulton, Knox, Henry and Will Counties in Illinois at the present time, the year in which each of such

mines began operation and the number of tons of coal each of such mines produced in each year.

Exhibit No. 117:

This exhibit is a statement showing the population in 1940 of the respective suspended and comparative points [fol. 2960] selected by the carriers and the Coal Trade Association of Indiana.

Exhibit No. 118:

This exhibit is a statement of certain corrections to be made in Exhibits Nos. 23, 25, 34 and 97.

And it is further stipulated and agreed that, notwithstanding anything contained in the designations of the parts of the record to be printed heretofore filed by the parties, the printed record shall contain only:

1. The material called for in Items 1 through 37, both inclusive, Item 38 (a), Item 38 (b) (1) and Item 39 of appellants' designation.

2. This stipulation.

3. In addition to the pages of transcript of testimony called for in Item 38 (b) (1) of appellants' designation, the following:

Line 10 of page 648 to and including line 16 of page 649.
Line 12 of page 723 to and including line 8 of page 726.

4. Exhibits Nos. 1 and 2 introduced before the Commission (being maps of origin and destination territory).

And it is further stipulated and agreed that the parties, or any of them, in brief or argument may refer to, and the Court may consider, any part of the record on appeal, whether printed or not, to the same extent as if set forth in full in the printed record.

Dated November 22, 1946.

Earl B. Wilkinson, Franklin Fay, Attorneys for Ayrshire Collieries Corporation, et al., Appellants; Carson L. Taylor, William L. Hunter, Attorneys for Chicago, Milwaukee, St. Paul and Pacific Rail- [fol. 2961] road Company, Appellant; George T. Washington, Acting Sol. Gen. For United States of America; Daniel W. Knowlton, Attorney for

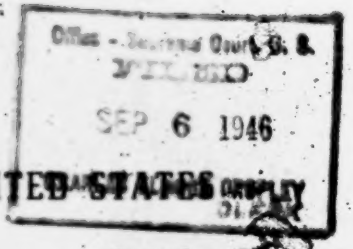
Interstate Commerce Commission; Erle J. Zoll, Jr., Attorney for The Alton Railroad Company (Henry A. Gardner, Trustee), and other intervening railroads; Charles W. Stadell, Attorney for Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau.

[fol. 2962] [File endorsement omitted].

Endorsed on Cover: File No. 51331, S. Indiana D.C. U.S. Term No. 467. Ayrshire Collieries Corporation, et al., and Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Appellants vs. The United States of America, Interstate Commerce Commission, et al. Filed September 6, 1946. Term No. 467 O.T. 1946.

192

FILE COPY



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

749458
Sup Ct

No. 467

AYRSHIRE COLLIERIES CORPORATION, ET AL., AND CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA

STATEMENT AS TO JURISDICTION

EARL B. WILKINSON,
ARTHUR R. HALL,
J. ALFRED MORAN,
CARSON L. TAYLOR,
WILLIAM L. HUNTER,
Counsel for Appellants.

INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Statutes	2
Decree	2
Nature of the case and rulings below	2
Cases sustaining jurisdiction	7
Grounds upon which it is contended questions involved are substantial	7
Appendix—Findings of fact and conclusions of law	9

Table of Cases Cited

Skinner & Eddy Corporation v. *United States*, 249 U. S. 557	7
Youngstown Sheet & Tube Co. v. *United States*, 295 U. S. 476	7
Western Paper Makers Chemical Co. v. *United States*, 271 U. S. 268	7
United States v. *Chicago, Milwaukee, St. Paul & Pacific R. R. Co.*, 294 U. S. 499	7

Statutes Cited

Commerce Court Act, Sec. 5 (c. 309, 36 Stat. 539; U. S. Code, Suppl. III, Tit. 28, Sec. 45a)	2
Interstate Commerce Act, Sec. 15(7) 28 U. S. C. A. 15(7)	3, 7
Judicial Code, Sec. 238 as amended	2
Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210, 219; U. S. Code, Tit. 28, Sec. 45 and 47a, Suppl. III)	2

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 467

No. 1072, Civil

AYRSHIRE COLLIERIES CORPORATION, A CORPORATION, ET AL.,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant;

INTERSTATE COMMERCE COMMISSION, ET AL.,

Intervening Defendants.

No. 1076, Civil

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant;

INTERSTATE COMMERCE COMMISSION, ET AL.,

Intervening Defendants.

STATEMENT AS TO JURISDICTION ON APPEAL

In compliance with Rule 12 of the Rules of the Supreme Court, appellants submit herewith their statement showing

the basis of the jurisdiction of the Supreme Court of the above entitled case on appeal.

Statutes

Section 5 of the Commerce Court Act (c. 309, 36 Stat. 539; U. S. Code, Suppl. III, Tit. 28, Sec. 45a).

Section 238 of the Judicial Code as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, 938, par. (4); U. S. Code, Tit. 28, Sec. 345).

Urgent deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210, 219; U. S. Code, Tit. 28, Secs. 45 and 47a, suppl. III).

Decree

The decree sought to be reviewed was entered June 5th, 1946.

The petition for appeal was filed on July 30, 1946, and the order allowing the appeal was entered August 1, 1946.

The Nature of the Case and Rulings Below

This suit in cause No. 1072 was brought by the Ayrshire Collieries Corporation and twenty-three other corporations and individuals operating coal mines in the state of Indiana, and the Coal Trade Association whose members are the other plaintiffs and other operators of coal mines in Indiana, and suit in cause No. 1076 was brought by Chicago, Milwaukee, St. Paul & Pacific Railroad Company, both suits seeking to enjoin, set aside and annul an order of the Interstate Commerce Commission, made and entered July 9th, 1945, in a proceeding then pending before said Commission entitled "I. & S. Docket No. 5139, Coal to Beloit, Wis., and Northern Illinois" reported 363 I. C. C. 179; the effective date of said order having been extended to July 23, 1946, by order of the Commission entered from time to time.

This proceeding before the Commission was instituted by it upon protest filed by the Coal Trade Association of Indiana, on behalf of its members, requesting the suspension of and an investigation by the Commission of the lawfulness of, certain schedules of new increased rates on coal filed by all carriers serving coal mines in Indiana, including the Chicago, Milwaukee, St. Paul & Pacific Railroad, from such mines to Rockford, Illinois, and numerous other destinations in northern Illinois, and by all of said carriers other than the Southern Railroad and the Chicago, Milwaukee, St. Paul and Pacific Railroad (hereinafter referred to as the Milwaukee) via its single line from mines served by it in Indiana to Beloit, Wisconsin. Said schedules of new rates were published to become effective on or about August 2, 1942. The new rates to Rockford were 15¢ per ton higher than the then existing rates, the new rates to other destinations were higher than the existing rates by amounts ranging up to 15¢ per ton. The new rates of each carrier to a destination in Illinois were increased the same amount per ton as the rates of all other carriers to the same destination from all origin points in Indiana. Twelve typical destinations are shown in Appendix A to the Commission's report of July 9, 1945.

The carriers serving mines in Illinois also filed schedules of new interstate rates from such mines to Rockford and other destinations in northern Illinois, increasing the existing rates generally but not uniformly by the same amounts per ton as the new rates from Indiana mines were increased, but not increasing the rates to Beloit and reducing the rates to some of the destinations in northern Illinois.

The Commission, acting upon the aforesaid protest in the exercise of its power under Section 15(7) of the Interstate Commerce Act (28 U. S. C. A. 15(7)), entered upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in said schedules, and sus-

pended the operation of said schedules of new rates until March 2, 1943. Such suspension was extended until final decision by the Commission by agreement of the carriers.

The carriers serving mines in Illinois also filed schedules of new intrastate rates with the Illinois Commerce Commission, which new rates, generally, but not uniformly, increased the existing rates the same amount to the same destination as the proposed rates from Indiana were increased to such destination; in a few instances the new intrastate rates were lower than the existing intrastate rates. The Illinois Commerce Commission suspended the new intrastate rates and entered upon a hearing as to their lawfulness.

Thereafter in response to the petition filed with it by carriers serving mines in Illinois alleging that the intrastate rates on coal from mines in Illinois to Rockford and other destinations in northern Illinois unduly preferred intrastate shippers and receivers of coal, and unduly prejudiced interstate shippers and receivers of coal, and unduly discriminated against interstate commerce in coal in violation of Section 13 of the Interstate Commerce Act, the Commission entered upon an investigation concerning the lawfulness of the intrastate rates on coal in Illinois. Said investigation so instituted by the Commission was entitled "Docket No. 28881 Bituminous Coal Rates within Illinois."

A hearing was had before the Commission of both I. & S. Docket No. 5139 and Docket No. 28881 upon a common record, and on July 9, 1945, the Commission issued its report covering both proceedings, and entered its order in I. & S. Docket 5139, finding that the proposed rates were not justified, and requiring the respondent carriers to cancel the proposed new rates, but without prejudice to establishment of rates on the basis approved in said report, and further ordering the respondent carriers according as they partici-

pated in the transportation to cease and desist from practicing the unjust discrimination under Section 2 of the Interstate Commerce Act and the undue prejudice, and preference under Section 3(1) of said Act found in said report to exist and to publish, maintain and apply rates and charges which will avoid and remove said unjust discrimination and undue prejudice and preference.

The Commission in its report made certain findings of fact, and on the basis thereof concluded that the present and proposed rates from Indiana to northern Illinois destinations enumerated in Appendix E to the report result or would result in unjust discrimination as between shippers and receivers of coal transported in whole or in part by the Milwaukee or Illinois Central railroads, in violation of Section 2 of the Act, and in undue preference and prejudice as between origins in the Brazil and Linton districts, and as between the respective Indiana districts, in violation of Section 3(1) of the Act, and to the extent that such rates reflect or would reflect rate relations between such districts and between the points in each of such districts to the respective destinations which differ from the relations reflected by the rates and rate basis set forth as approved in this report including Appendixes A and D thereto.

In apt time the Coal Trade Association of Indiana, on behalf of its members, and the Milwaukee filed their respective petitions with the Commission for reopening, rehearing, reargument, and reconsideration of the report and order of the Commission of July 9, 1945, which petitions were denied by the Commission on November 13, 1945, and the effective date of its order postponed to January 21, 1946.

Plaintiffs in cause No. 1072 then filed their petition in this court, seeking to enjoin in whole or in part the order of the Commission of July 9, 1945, in said I. & S. Docket

5139. The Chicago, Milwaukee, St. Paul & Pacific Railroad Company, plaintiff in cause No. 1076, filed its petition seeking to enjoin the said order of the Commission. Said petitions were filed in District Court of United States for the Southern District of Indiana, Indianapolis Division, and a statutory court of three judges was called to hear same. By order of said court the petition of the Ayrshire Collieries Corporation, et al., No. 1072, and petition of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, No. 1076, were consolidated for all purposes.

Hearing was had in said consolidated causes before a statutory court of three judges, at which hearing the complete record before the Commission, and certified copies of the suspended tariff schedules, were received in evidence. Findings of fact and conclusions of law were made and filed in which the court held that the Commission had acted within its authority and that its report and order were supported by adequate findings of fact, substantially supported by the record before the Commission, and afforded a rational basis for the conclusions of the Commission; that the plaintiffs were accorded a full and fair hearing by the Commission, and the record disclosed no error of law, and that the report and order of the Commission are lawful and valid in all respects, and entered a final decree on June 5, 1946, dismissing the petition of the Ayrshire Collieries Corporation, et al., and the petition of the Chicago, Milwaukee, St. Paul & Pacific Railway Company. Said findings of fact, conclusions of law and decree were filed in the District Court and entered on June 5, 1946. No opinion was rendered by the court. Due to illness of one of the members of said court, which occurred after the hearing, the causes were determined by, and the findings of fact, conclusions of law and the decree dismissing the two complaints, were made by, two members of the court.

Cases Sustaining Jurisdiction

Youngstown Sheet & Tube Company v. *U. S.*, 295 U. S. 476;

Western Paper Makers Chemical Company v. *U. S.*, 271 U. S. 268;

Skinner & Eddy Corporation v. *United States*, 249 U. S. 557;

United States v. *Chicago, Milwaukee, St. Paul & Pacific Railroad Company*, 294 U. S. 499.

Grounds upon Which It Is Contended Questions Involved Are Substantial

The questions raised by the assignment of errors and here involved are substantial because they are of general public interest, as well as of great financial interest to the plaintiffs in both of these proceedings. It is believed that several of the questions have not been decided by the Supreme Court.

One of the questions involved is the power and authority of two judges of a statutory three-judge court, where, after the hearing before all three judges, one of them became ill and was unable to participate in the determination of the case to determine a case heard by the three judges, to enter findings of fact, conclusions of law and a final decree. This question, we believe, has not been decided by the Supreme Court.

Other questions involve the power and authority of the Interstate Commerce Commission in the proceedings and on the record before it to enter the order here sought to be enjoined. It is believed a number of these questions involving the power and authority of the Commission in a proceeding under Section 15(7) of the Interstate Commerce Act (28 U. S. C. A. 15(7)) have not been decided by the Supreme Court.

The question of whether the decision and order of the Interstate Commerce Commission is arbitrary and capricious is substantial, and especially so where such order materially and adversely affects the sale and transportation of hundreds of thousands of tons of coal annually from Indiana to an important section of Illinois, thus depriving the plaintiff coal of their ability to compete in the affected markets, and depriving the plaintiff railroad from transporting such coal as might be sold by the plaintiff coal operators.

EARL B. WILKINSON,
J. ALFRED MORAN,
Attorneys for Plaintiffs in Civil Action No. 1072.

CARSON L. TAYLOR,
WILLIAM L. HUNTER,
Attorneys for Plaintiff in Civil Action No. 1076.

DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF INDIANA,
INDIANAPOLIS DIVISION

Civil Action No. 1072

AYRSHIRE COLLIERIES CORPORATION, ET AL.,
Plaintiffs,

vs.

UNITED STATES,
Defendant,

INTERSTATE COMMERCE COMMISSION, ET AL.,
Intervening Defendants.

Civil Action No. 1076

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY,
Plaintiff,

vs.

UNITED STATES,
Defendant,

INTERSTATE COMMERCE COMMISSION, ET AL.,
Intervening Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled causes coming on for final hearing on the merits before this duly constituted three-judge court [1] on

---

[1] Judge Evan A. Evans became ill subsequent to the hearing of these causes and he is and has been unable to participate in a determination thereof. The findings of fact, conclusions of law and judgment have therefore been entered by the remaining judges of such court.

April 22, 1946, upon the pleadings, evidence, arguments and briefs of counsel for the respective parties, the Court makes and enters its findings of fact and conclusions of law as follows:

Findings of Fact

1. Each of the plaintiffs in the first of the above-entitled cases is now, and at all times hereinafter mentioned has been, a corporation duly organized and existing under the laws of one or more of the States of the United States, or an individual, and each of them now is, and at all times hereinafter mentioned has been, engaged in the operation of a coal mine or mines in the State of Indiana, except the plaintiff Coal Trade Association of Indiana, which is a voluntary association whose members are composed of the other plaintiffs in such action and certain other persons and corporations operating coal mines in Indiana.

2. The Chicago, Milwaukee, St. Paul & Pacific Railroad Company, plaintiff in the second of the above-entitled actions, is a corporation, organized and existing under and by virtue of the laws of the State of Wisconsin, and owns and operates lines of railroad in the States of Indiana, Illinois, Wisconsin, and certain other States, and is engaged in the transportation of property and persons for hire, both interstate and intrastate, as a common carrier by railroad, subject to the Interstate Commerce Act. It has its principal office at Chicago, Illinois.

3. Heretofore, on July 30, 1942, the Chicago, Milwaukee, St. Paul & Pacific Railroad Company and other carriers having filed with the Interstate Commerce Commission (hereafter called the Commission) certain tariffs containing schedules stating individual and joint rates and charges, and individual and joint regulations and practices affecting such rates and charges, governing the interstate transpor-

tation of coal from Illinois, Indiana, and western Kentucky, to Rockford and other destinations in northern Illinois, and to Beloit and other destinations in southern Wisconsin, the Commission, upon complaint of the plaintiff Coal Trade Association of Indiana, suspended the operation of said tariffs and entered upon an investigation as to the lawfulness of the rates, charges, regulations, and practices stated in those tariffs. This proceeding was designated by the Commission as *Investigation and Suspension Docket No. 5139, Coal to Beloit, Wisconsin and Northern Illinois.*

4. Heretofore, on September 9, 1942, a petition having been filed with the Commission, on behalf of the Alton Railroad Company and other common carriers by railroad operating in the State of Illinois, averring that the Illinois Commerce Commission required those carriers to maintain rates for application on coal moving by rail in intrastate commerce within the State of Illinois from producing points to Rockford, Freeport, Dixon and other destinations north and west of Chicago in Illinois, which were less than those on interstate traffic; and those railroads having alleged that the observance by them of the said intrastate rates caused and resulted in undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other, and undue, unreasonable and unjust discrimination against interstate commerce, the Commission entered upon an investigation as to the lawfulness of the said intrastate rates on coal. This investigation was designated by the Commission as *Docket No. 28881, Bituminous Coal Rates Within Illinois.*

5. As the rates involved in both proceedings related to the coal rate structure from Illinois, Indiana and western Kentucky, to northern Illinois and southern Wisconsin, the

two investigation proceedings were consolidated for hearing and were heard together before examiners of the Commission. Evidence was adduced before the Commission by the plaintiffs in the above-entitled actions and others bearing upon the lawfulness of all the rates contained in the schedules under investigation, all of which has been adduced before this Court. A report covering both proceedings was proposed by an examiner of the Commission and exceptions were filed thereto by certain parties to the proceedings. Thereafter, on July 9, 1945, the Commission made and entered its report and order covering both proceedings, which report appears in 263 I. C. C. 179. These actions were brought to set aside the Commission's report and order dated July 9, 1945.

6. The Commission found that the present and proposed rates of the railroads were unlawful in certain respects, as shown in the Commission's report dated July 9, 1945. Accordingly, pursuant to its authority under Section 15 of the Interstate Commerce Act, the Commission prescribed interstate and intrastate rates to be published and collected by the carriers for the transportation of coal between the points involved in such proceedings and fixed relationships between certain producing areas in Illinois, Indiana and western Kentucky in lieu of the existing and proposed rates and relationships as stated in the tariffs under investigation.

Conclusions of Law

1. This Court has jurisdiction of the parties and the subject matter of these actions.

2. The Commission's report and order dated July 9, 1945, were made within its statutory authority and are supported by adequate findings of fact.

3. The findings of the Commission as set forth in the report and order of July 9, 1945, have substantial support in the record made before the Commission and afford a rational basis for its conclusions.

4. The plaintiffs were afforded a full and fair hearing before the Commission and the record made before the Commission discloses no error of law.

5. The Commission's report and order are lawful and valid in all respects.

6. The plaintiffs' complaints should be dismissed.

(Signed) J. EARL MAJOR,
United States Circuit Judge.
(Signed) MICHAEL L. IGOE,
United States District Judge.

Dated this 5th day of June, 1946.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. 467

AYRSHIRE COLLIERIES CORPORATION,
A CORPORATION, ET AL.,
Appellants,

vs.

UNITED STATES OF AMERICA, ET AL.,
Appellees.

No.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,
Appellant,

vs.

UNITED STATES OF AMERICA, ET AL.,
Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION.

BRIEF OF APPELLANTS IN OPPOSITION TO MOTION OF APPELLEE TO AFFIRM.

EARL B. WILKINSON,
ARTHUR R. HALL,
Attorneys for Ayshire Collieries Corporation, et al., Appellants.
CARSON L. TAYLOR,
WILLIAM L. HUNTER,
Attorneys for Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Appellant.

THE LAKESIDE PRESS, R. R. DONNELLEY & SONS COMPANY, CHICAGO

INDEX.

	PAGE
Statement	1
Argument:	
I. Two Members of a Statutory Three-Judge Court Cannot Determine a Case Pending Before Such Court When the Third Member Is Unable to Participate in Such Determination	2
II. The Question of Whether or Not the Order of the Commission to Remove Unjust Discriminations in the Present Rates Is Supported by Findings of Fact and Evidence Is Substantial	6
III. The Question of Whether or Not the Order of the Commission to Remove Undue Preference and Prejudice in the Present Rates Is Supported by Findings of Fact and by Evidence Is Substantial	12
IV. The Commission Had No Authority or Jurisdiction to Order an Increase in, or Change in the Relationship of, the Present Rates From Indiana in I. & S. Docket No. 5139	19
V. There Are Substantial Questions Involved Which Are Not Discussed in the Motion to Affirm	27
Conclusion	31
Appendix A	33
Appendix B	39

CITATIONS.

Cases.

A. E. Staley Mfg. Co. v. B. & O. R. Co., 262 I. C. C. 352 14

Akron, C. & Y. Railway Co. v. United States, 22 Fed. (2d) 199 22

Alton & Southern Railroad v. United States, 49 Fed. (2d) 414 23

Barringer & Co. v. United States, 319 U. S. 1 8

Chicago Live Stock Exchange v. Abilene & Southern Ry. Co., 223 I. C. C. 141 14

Cumberland Telephone & Telegraph Co. v. Louisiana Public Service Commission, 260 U. S. 212 ..... 4, 5

Coal to Illinois and Wisconsin, 232 I. C. C. 151 25

Dohany v. Rogers, State Highway Commissioner, 281 U. S. 362 6

Petroleum Rail Shippers' Assn. v. Alton & S. R., 243 I. C. C. 589 8

Petroleum Between Washington, Oregon, Idaho, and Montana, 234 I. C. C. 609 ..... 8, 9

Ryan v. Pennsylvania Public Utility Commission, 44 Fed. Supp. 912 6

Spiller v. Atchison, Topeka & Santa Fe Ry. Co., 253 U. S. 117 23

Texas & Pacific Ry. Co. v. United States, 289 U. S. 627 ..... 12, 13

United States v. Chicago, Milwaukee, St. Paul & Pacific Ry. Co., 294 U. S. 499 11

United States v. Illinois Central R. R. Co., 263 U. S. 515 14

Virginian Railway Co. v. United States, 272 U. S. 658 5

Youngstown Sheet & Tube Co. v. United States, 295 U. S. 479 18

Statutes.

Interstate Commerce Act, as amended:

Sec. 2 33

Sec. 3 (1) 33

Sec. 13 (1) 33, 34

Sec. 14 (4) 34, 35

Sec. 15 (1) 35, 36

Sec. 15 (7) 36, 37

U. S. Code, Title 28, Sec. 47 ..... 37, 38

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. .....

AYRSHIRE COLLIERIES CORPORATION,
A CORPORATION, ET AL.,
Appellants,

vs.

UNITED STATES OF AMERICA, ET AL.,
Appellees.

No. .....

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,
Appellant,

vs.

UNITED STATES OF AMERICA, ET AL.,
Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION.

BRIEF OF APPELLANTS IN OPPOSITION TO MOTION OF APPELLEE TO AFFIRM.

MAY IT PLEASE THE COURT:

The motion to affirm the decree of the District Court, filed by the appellee, the United States of America, is predicated on the charge that the appeal presents no substantial

questions. Appellee prefaces its argument by a statement of "history of the rates involved" which contains several inaccurate and misleading statements. We will refer to such errors later in this brief.

We will discuss the propositions urged by appellee. We will also discuss questions involved in this appeal which are not referred to by appellee.

The pertinent provisions of the Interstate Commerce Act and Section 47 of Title 28, U. S. Code, are attached to this brief as Appendix A, *infra*, pp. 33-38.

I.

Two Members of a Statutory Three-Judge Court Cannot Determine a Case Pending Before Such Court When the Third Member Is Unable to Participate in Such Determination.

The above causes came on for final hearing on the merits before a duly constituted three-judge court on April 22, 1946. Judge Evans became ill subsequent to the hearing and did not participate in the determination of the causes. The findings of fact, conclusions of law and judgment in these cases were made and entered by Judges Major and Igoe. These facts appear from the marginal note on the first page of the findings of fact, as follows:

> "Judge Evan A. Evans became ill subsequent to the hearing of these causes and he is and has been unable to participate in a determination thereof. The findings of fact, conclusions of law and judgment have therefore been entered by the remaining judges of such court."

Appellee argues that because the decision is concurred in by a majority of the three judges, two of the judges may proceed in the absence of the third to a determination and

disposition of the causes. It cites no case to sustain this position.

The applicable provisions of the statute, 28 U. S. C. 47, *infra*, pp. 37-38, are as follows:

> "No interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless a majority of said three judges shall concur in granting such application. * * *; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply."

The provision that the application shall be heard and determined by three judges, with a majority concurring in the decision, would be nullified if appellee's contention were adopted. The determination of the case by three judges imports a joint consideration of the case by all three of the judges. Such consideration would involve an exchange of views and a discussion of any conflicting ideas by three judges, not by two. To permit two judges acting alone to decide a case nullifies the statutory purpose of securing the benefit of joint consideration and determination of three judges.

The statute provides that at least one of the three judges shall be a circuit judge. Appellee's contention would nullify this provision in cases where the circuit judge became disabled and two district judges determined and decided the case. The provision that at least one member of the three-

judge court shall be a circuit judge, supports our contention that the hearing and determination be by all three members, because it is to be presumed that Congress intended the statutory court to have the benefit of the experience of the circuit judge as a reviewing judge.

The statute provides for hearing and determination by three judges. Each phase is equally important. A hearing by three judges, and determination by two, is more inconsistent in actual practice with the intent of the statute than a hearing by two judges and a determination by three. Yet it is doubtful that anyone would urge that a hearing by two judges would satisfy the statute.

We have been unable to find any decision in which this precise question was involved, but there are several decisions that involve similar questions, and they lead to the conclusion that the two judges, acting alone and without the benefit of the views of the other member of the three-judge court, had no authority to determine these cases, or enter a final decree therein.

In the case of *Cumberland Telephone & Telegraph Co.* v. *Louisiana Public Service Commission*, 260 U. S. 212, 216-217, a statutory three-judge court had denied an application for an injunction against an order of the Louisiana Public Service Commission. On application of the complainant, one member of the court entered an order granting a supersedeas and continuing the original restraining order until the appeal from the final decree could be determined. There the Court said (pages 216 and 217):

> "The wording of the section (Sec. 266 of the Judicial Code) leaves no doubt that Congress was by provisions *ex industria* seeking to make interference by interlocutory injunction from a federal court * * * a matter of the adequate hearing and the full deliberation which the presence of three judges, one of whom should be a Circuit Justice or Judge, was likely to secure.

> • • • We are of the opinion that a single judge has no power, in view of Sec. 266, to affect the operation of the Court constituted by the three judges granting or denying the interlocutory injunction applied for. To hold that he may grant a temporary injunction varying the order of the three judges would be to make the legislation a nullity and work the result which Congress was at great pains to avoid."

In the cited case the judge granting the stay stated that one of the other judges concurred in so doing. This Court said with respect thereto (page 218):

> "This statement does not make the order here in question the act of the three judges. Judge Bryan's letter • • • was a mere expression of opinion that Judge Foster as District Judge had the power to grant the injunction, an opinion with which we do not agree. • • • Nor is there any showing that Judge Clayton took part in the matter. A discussion in conference of the judges as to the granting of an injunction pending an appeal before it was applied for does not supply what is needed to give efficacy to such order by a single judge. Compliance with the statute requires the assent of the three judges given after the application is made evidenced by their signatures or an announcement in open court with three judges sitting followed by a formal order tested as they direct. • • • We have no proper evidence of the participation of the three judges in the injunction here and therefore grant the motion to set it aside as void and made without jurisdiction."

Section 266 of the Judicial Code (28 U. S. C. 380) is substantially the same as the provisions of the statute governing proceedings to enjoin an order of the Interstate Commerce Commission (28 U. S. C. 47). In both there is a provision for hearing and determination by three judges, with a majority concurring in the order. See *Virginian Railway Co.* v. *United States*, 272 U. S. 658, at 672.

In *Ryan* v. *Pennsylvania Public Utility Commission*, 44 Fed. Supp. 912, 914, upon application to a statutory court for an injunction pending appeal, it is said:

> "The court which heard the case at bar on its merits, however, cannot sit to hear the plaintiffs' application for an injunction pending an appeal because one of its members was commissioned as an officer in the United States Army on March 26, 1942 and is not available."

In *Dohany* v. *Rogers, State Highway Commissioner*, 281 U. S. 362, the Court held that a decree of a statutory three-judge court signed by one judge, which recited that (p. 369) "the court * * * being fully advised in the premises, do now here order, adjudge and decree", showed action of the three judge court—not just the action of one judge. This decree was supported by an opinion signed by two of the judges and a concurring opinion signed by the third judge, of which the Court said (p. 370): "This we think equivalent for that purpose to an announcement in open court, three judges sitting."

We submit that not only is the question of the power of two judges acting alone to determine these cases substantial, but the statute and decided cases show no such power existed.

II.

The Question of Whether or Not the Order of the Commission to Remove Unjust Discriminations in the Present Rates Is Supported by Findings of Fact and Evidence Is Substantial.

This question is mentioned by appellee but, while important, is not fully discussed.

The conclusions of law filed in the District Court state:

> "2. The Commission's report and order dated July 9, 1945, were made within its statutory authority and are supported by adequate findings of fact.

"3. The findings of the Commission as set forth in the report and order of July 9, 1945, have substantial support in the record made before the Commission and afford a rational basis for its conclusions."

The order of the Commission of July 9, 1945 requires carriers, according as they participate in the transportation—"(1) to cease and desist from practicing the unjust discrimination under Section 2 of the Interstate Commerce Act and the undue prejudice and preference under Section 3 (1) of said Act, found in said report to exist, and (2) to publish, maintain, and apply rates and charges that will avoid and remove said unjust discrimination and undue prejudice and preference."

Throughout this brief the reference to "present rates" is to the rates in effect at the time of the filing of the tariffs suspended by the Commission, and continuing in effect during the hearing before the Commission.

Section 2 of the Interstate Commerce Act (hereinafter referred to as the "Act"), *infra*, p. 33, provides as follows:

"If any common carrier subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

The Commission has repeatedly interpreted this section as applying only where a like kind of traffic is transported

for two shippers from the same origin to the same destination over the same line or route under substantially similar circumstances and conditions. *Petroleum Rail Shippers' Assn.* v. *Alton & S. R.*, 243 I. C. C. 589, 639; *Petroleum Between Washington, Oregon, Idaho, and Montana*, 234 I. C. C. 609, 648.

This interpretation has been sustained by this Court: see *Barringer & Co.* v. *United States*, 319 U. S. 1, at pages 6 and 8, where it is said:

> "Section 2 is aimed at the prevention of favoritism among shippers. * * * But differences in rates as between shippers are prohibited only where the 'circumstances and conditions' attending the transportation service are 'substantially similar.' "

Further, at page 9:

> "We have repeatedly sustained a finding of the Commission that such a difference, based on a difference in identity of shippers or the ownership of the goods shipped, or on other circumstances irrelevant to the carrier service rendered, is an unjust discrimination to shippers. * * * The distinction between those cases and this is that here *the difference in the service charge is made between through shippers over different routes*, and is based on relevant differences in the 'circumstances and conditions' of the total transportation services rendered by the carriers. It was within the competence of the Commission to find that this involved no unjust discrimination." (Emphasis supplied.)

The Commission here made twenty major findings of fact. (263 I. C. C., at pages 213 through 217.) Nowhere in those findings is it stated that any coal from any origin point to any destination was being charged a higher rate than other coal from the same origin point to the same destination moving over the same line under substantially similar circumstances and conditions. Finding No. 4 of the Commission does not state any facts that would constitute a

violation of Section 2 of the Act. The finding shows on its face that there are 30 origin points in the Brazil group and 31 origin points in the Linton group; that the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter referred to as the "Milwaukee") serves but four of the origins in the Brazil group and nine in the Linton group. Nowhere does it appear that the origins served by the Milwaukee are served by any other carrier, and it is not so stated. The language of the Commission in the case of *Petroleum Between Washington, Oregon, Idaho and Montana*, 234 I. C. C. 609, at page 648, is applicable here:

> "Complainants say that the disparities against them resulting from the present and proposed rates from the northern Montana points constitute the violation of Section 2 alleged in their complaint without particularity. *However, their traffic does not originate at the same points as that of their competitors, and therefore Section 2 does not apply.*" (Emphasis supplied.)

The evidence affirmatively shows that the Milwaukee rates, where lower than those of other carriers serving origins in the Brazil and Linton groups, are via the single-line of the Milwaukee from origin to destination, while the rates in which the Milwaukee joins from origins in those groups on the lines of other carriers to such destinations are via two or more lines of railroad. In many instances the hauls via such joint-line routes are 50 or 100 miles longer than via the single-line routes of the Milwaukee.

The evidence shows that these so-called groups cover a large area. The origins within the groups are frequently many miles apart. The short tariff route distance from West Clinton to Rockford is 228 miles via the single-line of the Milwaukee; the short tariff route distance from Cedar Point on the Pennsylvania Railroad to Rockford is 283 miles, a difference in haul of 55 miles. To St. Charles, Illinois, from West Clinton the single-line haul of the

Milwaukee is 179 miles; the short tariff route distance via the Pennsylvania from Centre Point is 295 miles, a difference of 116 miles.

The findings of the Commission do not support Conclusion No. 1 (263 I. C. C. at pages 217-218), that—

> "The present rates * * * from Indiana to the northern Illinois destinations * * * result * * * in unjust discrimination as between shippers and receivers of coal transported in whole or in part by the Milwaukee or Illinois Central railroads, in violation of section 2 of the Act * * * to the extent such rates reflect * * * rate relations between such districts and the points in each of those districts to the respective destinations which differ from the relations reflected by the rates and rate bases set forth as approved in this report, including appendices A and D hereto."

The report states that the foregoing conclusion is based upon the major findings of fact. It is clear that the twenty findings of fact do not support that conclusion. The statement that, "The transportation conditions under which coal moves from Indiana and Illinois groups to those northern Illinois destinations are sufficiently similar to require the use of the same rate basis from all such groups," is not a finding that the circumstances and conditions under which coal moves from a point on the Milwaukee in the Brazil group to St. Charles or Rockford, Illinois, are substantially similar to the circumstances and conditions under which coal moves from a point on the New York Central Railroad in the Brazil group to St. Charles or Rockford. Such a finding could not be made because no witness testified regarding the circumstances and conditions under which coal, if any, moves from any point on the New York Central to any destination.

The question here presented is one of law. Do the facts found by the Commission constitute a violation of Section

2 of the Interstate Commerce Act? As above shown, the Commission and this Court have heretofore ruled that they do not. There is the further question of whether or not the facts found by the Commission are supported by substantial evidence.

Inherent in the decisions of the Commission and District Court on the subject of discrimination, is the power of the Commission in a proceeding such as I. & S. Docket No. 5139, to treat the thirty origin points in the Brazil group, four of which are served by the Milwaukee, five by the B. & O., ten by the C. & E. I., three by the New York Central, seven by the Pennsylvania, and one by the Indiana Railroad, as one point of origin, and to compel each of those carriers to charge the same rate from each of said origins. This Court in the case of *United States* v. *Chicago, Milwaukee, St. Paul & Pacific Ry. Co.*, 294 U. S. 499, at page 506, held to the contrary.

Appellee's erroneous definition of a "group" appearing in the margin of its motion to affirm may have led it to assume that a group was equivalent to a single origin point. A group in the midwest coal adjustment is the result of competing carriers serving mines in a fairly large area competing with one another by meeting the lowest rates of a competitor to important destinations. That the competing carriers do not universally meet these competitive rates is shown by the evidence herein. (See Exhibit 3, Part V, of the record before the Commission). It appears that sometimes the carriers serving a group of origins will all publish the same rate to some destinations; at other destinations most of the carriers will publish the same rate, while others will publish higher or lower rates; and some do not publish any specific rates.

We submit that the question raised with respect to the order of the Commission pertaining to unjust discrimina-

tion under Section 2 of the Interstate Commerce Act, which order was approved by the District Court, is material and substantial, and one which the parties hereto are entitled to have determined by this Court.

We have discussed the lack of evidence of and findings of facts regarding the present rates that as a matter of law would constitute a violation of Section 2 of the Act; the same lack of findings of fact and evidence in this regard exists with respect to the proposed rates.

III.

The Question of Whether or Not the Order of the Commission to Remove Undue Preference and Prejudice in the Present Rates Is Supported by Findings of Fact and by Evidence Is Substantial.

This question is not discussed fully in the motion to affirm. The discussion is confined to the claim that there is no finding or evidence that the Milwaukee has effective control over the joint-line rates in which it participates in moving coal from mines on other carriers, and to the failure of the order to afford the alternative to the carriers of increasing the rates of the Milwaukee or reducing the rates of the other carriers or a combination of the two.

The report of the Commission contains no finding, statement or even an intimation that the Milwaukee has any control over the rates published by any other carrier from mines in any Indiana group to any destination. The evidence is equally barren of any such statement. Such a finding is essential to sustain the order, and the District Court erred in not so holding. In *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627, at page 646, it is said:

> "Where * * * a carrier whose lines reach, or which controls the rate to, one of the destinations, is

a party to a joint rate to the other but can not make or control the latter rate, or though it were to withdraw as a party thereto, or to cancel the rate, the discrimination would still continue—it cannot be held responsible, nor can any order to remove the prejudice run against it. * * * Assuming that neither rate is unreasonable, the one carrier cannot be compelled to alter its rate, because the other's is higher or lower for the same service. A carrier or group of carriers must be the common source of the discrimination—must effectively participate in both rates, if an order for correction of the disparity is to run against it or them."

Here there is no evidence and no finding that any carrier serving an Indiana group controlled the single-line rates of the Milwaukee from mines on its line in Indiana to destinations on its lines in Illinois. Likewise, there is no evidence or finding that the Milwaukee in any way controlled the rates published by the C. & E. I., the New York Central, the Pennsylvania or any other carrier serving mines in Indiana to Rockford or other destinations on the line of the Milwaukee in Illinois. If the Milwaukee withdrew its participation in the joint-line rates, the difference between its single-line rates to Rockford and the joint-line rates to Rockford via other delivering carriers would still exist. Appellees contention is contrary to the decision of this Court in the *Texas & Pacific* case cited and quoted above.

No effort is made by appellee to explain the lack of findings and evidence that the single-line rates of the Milwaukee unduly preferred the shippers on the Milwaukee and prejudiced those served by other carriers in the Indiana groups. The Commission has long recognized that a mere disparity in rates does not establish undue preference and prejudice. To be undue, preference and

prejudice must be a source of advantage to the party or locality alleged to be favored and a detriment to the other party or locality. See *Chicago Live Stock Exchange* v. *Abilene & Southern Ry. Co.*, 223 I. C. C. 141, at page 152; *A. E. Staley Mfg. Co.* v. *B. & O. R. Co.*, 262 I. C. C. 352, at page 356. This rule of law has been stated by this Court in *United States* v. *Illinois Central R. R. Co.*, 263 U. S. 515, at page 521, and in other cases.

The Commission has made no finding that the single-line rates of the Milwaukee prevented any shipper served by another carrier in Indiana from shipping coal. It has made no finding that any coal producer served by any other carrier in Indiana would ship more coal if the lower single-line rates of the Milwaukee were increased or cancelled. No witness testified on that subject. The truth is that the single-line rates of the Milwaukee enabled shippers on its line to compete with coal shipped from Illinois mines on their lower rates to Rockford. Those lower Illinois rates are what prevent Indiana coal operators served by carriers other than the Milwaukee from shipping coal. The Milwaukee rate from Brazil for its 236 mile haul is the same as the rate from the Springfield group in Illinois to Rockford, for an average haul of 257 miles. The Commission's approved rates from Brazil group to Rockford are 12 cents higher than from Springfield, although the average distance from the Brazil group is 6 miles shorter than from the Springfield group. The present rates from the Brazil group via joint-line routes to Rockford are 17 cents higher than from the Springfield group. The present rates from the Southern Illinois group are only 13 cents per ton higher than the joint-line rates from the Brazil group to Rockford, while the distance from the Southern Illinois group is 112 miles greater than from the Brazil group. It is not the single-line rates of the Mil-

waukee that in any way prevent the Indiana operators, who must ship on the joint-line rates from the Brazil and Linton groups, from selling and shipping coal to Rockford and other destinations on the line of the Milwaukee in Illinois; it is the rates from the Illinois mines to those destinations.

The Commission admits there is no evidence of undue prejudice and preference in the rates from the Brazil and Linton groups to Rockford and other Illinois destinations by its statement on page 195 of its report (263 I. C. C. 179): "Under the circumstances recited an extensive showing of injury through loss of tonnage to particular coal shippers or consumers by reason of the discriminatory rates here before us is not required." But under any circumstances there must be some evidence of injury to one and benefit to another to sustain an order of prejudice and preference. The Commission has pointed to no such evidence, because there was none. The cases cited by the Commission do not sustain its statement.

The Commission precedes the above quoted statement by saying, "The transportation conditions over the single-line routes of the Milwaukee and the Illinois Central do not differ materially from those over joint-line routes to the same destinations from other mines in the same groups." That statement is not made as a finding of fact, it is in the body of the report. It is not supported by any evidence. The transportation conditions of the Milwaukee were described in detail by witness Whalen, but no witness described or referred to the transportation conditions of any of the other carriers serving mines in the Brazil and Linton groups except the C. & E. I. Railroad. In addition to the Milwaukee, the B. & O., Pennsylvania, New York Central, C. & E. I. and Indiana railroads serve mines in the Brazil group, and the C. I. & L. (Monon), C. & E. I., Illinois Central, New York Central and Penn-

sylvania serve mines in the Linton group. With only a showing of distance, grades and curves by the C. & E. I. for its own line, and nothing as to other transportation conditions, and no showing at all as to the other carriers, the Commission erred in stating the transportation conditions via the Milwaukee and Illinois Central from Indiana do not differ materially from those via other carriers serving the Brazil and Linton groups. Appellee quotes this unfounded statement in the report as part of its argument.

The evidence shows that the transportation conditions via the single line of the Milwaukee are ideal—there is no passenger traffic over its line from the coal groups to Chicago; one engine hauls more cars than even the C. B. & Q. from Southern Illinois; its service in originating the coal is at a minimum, it has no difficult grades or curves; no interline switching is involved. The record shows nothing of these facts as to the other carriers serving Indiana, except grades, curves and the type of motive power used on the C. & E. I.

The District Court seriously erred in holding that the findings of fact sustained the order and that the evidence supported the findings of fact. We submit it is the right of appellants that this Court pass upon the question of the power of the Commission to order carriers to cease and desist from an alleged prejudice and preference in rates when there is no evidence of the facts essential to constitute an undue prejudice and preference, and there are no findings of such facts by the Commission. We further submit that this question is substantial.

What has been said above regarding the lack of findings of fact that would constitute a violation of Section 3 (1) of the Act by the present rates, is equally true with respect to the proposed rates.

It is assigned as error that the order of the Commission is invalid because it does not leave the carriers with an alternative in the removal of the prejudice and preference phase of the order. Appellee states that a complete answer to this contention is that the order was entered under Section 15 of the Act, and not under Section 3.

All orders of the Commission regarding rates are entered by virtue of Section 15 of the Act, except orders to remove prejudice and preference or discrimination caused by intrastate rates against interstate commerce, which is covered by Section 13 (4). Section 3 (1), *infra*, p. 33, declares it to be unlawful for any carrier to subject any person, locality or description of traffic to any undue or unreasonable prejudice or preference; it does not say what the Commission may do in the event a carrier violates that prohibition. The same is true with respect to Section 1 (5), which declares unreasonable charges to be unlawful, and Section 2, *infra*, p. 33, which declares unjust discrimination to be unlawful. None of those sections provide any penalty or remedy for such unlawfulness, if it exists. However, Section 13. (1), *infra*, pp. 33-34, provides for complaints against carriers violating the Act, and Section 15 (1), *infra*, pp. 35-36, provides that after hearing upon a complaint made as provided in Section 13, or after hearing under an order for investigation made on its own initiative, the Commission, if it is of the opinion the rate or charge is or will be unjust or unreasonable (Section 1 (5)), unjustly discriminatory (Section 2), or unduly preferential or prejudicial (Section 3 (1)), or otherwise in violation of the Act, is authorized and empowered to determine and prescribe what will be the just and reasonable charges, or the maximum or minimum, or maximum and minimum, to be charged, and to make an order that the carrier or carriers shall cease and desist from such violation.

It is no answer to say the order was entered under Section 15, since all orders which the Commission may make for violations of Sections 2, 3 or 13, or other provisions of the Act, are authorized by Section 15.

Appellee cites the case of *Youngstown Sheet & Tube Co.* v. *United States*, 295 U. S. 479, as sustaining its contention, but in that case the Commission prescribed certain minimum rates from Ohio River crossings to Youngstown in order to correct the situation found to be unlawful. The Commission under Section 15 (1) may enter such order in a proper case; it may enter such order under Section 13 (4), but in the case here involved it did not do so. The order here merely requires the carriers to cease and desist from practicing the unjust discrimination and prejudice and preference found in the report to exist, and to maintain rates that would avoid such discrimination, prejudice and preference.

The assignment of error is based on the practical effect of the order because the Milwaukee does not control the rates of the other carriers; it can not comply with the order by reducing the rates of the other carriers—it can only comply by increasing its own rates. The very fact that actually no alternative is afforded the Milwaukee shows the fallacy of appellees argument that the Milwaukee effectively controls any rates but its own single-line rates.

There are no rates prescribed by the order of the Commission. The proposed rates which were suspended are ordered to be cancelled, but without prejudice to publishing the approved rates. That is not a requirement that the approved rates be published. Surely it can not be said that that part of the order prescribed or required any minimum or maximum rates to be published and main-

tained. The decision in the *Youngstown* case is not applicable to the facts here.

IV.

The Commission Had No Authority or Jurisdiction to Order an Increase in, or Change in the Relationship of, the Present Rates From Indiana in I. & S. Docket No. 5139.

This proceeding before the Commission was initiated by the complaint of the Coal Trade Associatio of Indiana, seeking the suspension of certain new rates contained in rate schedules filed by the carriers serving Indiana mines, to Rockford and other destinations in Illinois, and to Beloit, Wisconsin. The Commission, acting upon said complaint, entered its order for investigation of the lawfulness of the rates, and for their suspension. That order recites: "* * * there have been filed with the Interstate Commerce Commission tariffs containing schedules stating new individual and joint rates * * * to become effective on the 2nd day of August, 1942 * * * designated as follows:" Then is listed a number of supplements to the tariffs of a number of carriers. The order proceeds:

> "*It is ordered*, That the Commission upon complaint, without formal pleading enter upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in the said schedules contained in said tariffs, viz: (enumerating supplements to tariffs of certain railroads, and proceeding). And the rates, charges, regulations and practices stated in all schedules contained in each of the other said tariffs and supplements named in this order."

The order proceeds, after reciting that said schedules make certain increases and reductions in interstate rates on coal, the rights and interests of the public appear-

ing to be injuriously affected thereby, and that the Commission is of the opinion that "the effective date of the said schedules contained in said tariffs should be postponed pending said hearing and decision thereon," it is ordered "That the operation of the said schedules contained in said tariffs be suspended," and shall not be changed pending the expiration of the period of suspension or any extension thereof. The order then assigns "this proceeding" for hearing.

Section 15 (7) of the Act, *infra*, pp. 36-37, authorizes the Commission on complaint or on its own initiative when any schedule stating a new rate is filed, to enter upon a hearing concerning the lawfulness of such rate, and pending such hearing and decision thereon, to suspend the operation of such schedule, and after full hearing to make such order with reference thereto as would be proper in a proceeding initiated after it (such new rate) had become effective.

It is clear from the provisions of Section 15 (7) that the Commission is there given power to enter upon a hearing regarding the lawfulness of new rates, and to suspend the operation of such new rates pending the hearing and decision.

It is equally clear that the Commission by its order of July 30, 1942, entered upon a hearing concerning the lawfulness of the new rates contained in the schedules in the supplements to tariffs enumerated in the order, and suspended the schedules of new rates pending the hearings. No hearing was ordered with respect to any other subject matter.

Appellee in its motion to affirm states that some of the schedules republished the existing rates. This is an incorrect statement as to any of the rates to Rockford or

other destinations in Illinois. The Milwaukee filed supplements to three tariffs. One of those supplements contained rates to Beloit—in it the Milwaukee published new rates via joint-line routes from mines in Indiana and republished its present single-line rates from mines served by it to Beloit. That is not true with regard to Illinois destinations.

Further, the order of the Commission of July 30, 1942, for the investigation and suspension of the rates uses the same language entering upon the hearing concerning the lawfulness of the rates as it does in suspending the operation of same. The hearing is "concerning the lawfulness of the rates, charges, regulations and practices stated in said schedules contained in said tariffs, viz. (Enumerating a part of those supplements previously listed), and the rates, charges, regulations and practices stated in all schedules in each of said tariffs and supplements named in this order." The suspension is "of the said schedules contained in said tariffs." If, as appellee contends, the Commission's order of July 30, 1942 included present rates, there would have existed a situation of having no lawful rates in effect, because all rates, present and proposed, would be suspended pending hearing and decision. No such intent can be attributed to the Commission. The order for investigation and suspension affected only the proposed new rates.

With respect to the one schedule that republished the present single-line rates of the Milwaukee to Beloit, the Commission in its report said:

> "To Beloit * * * the rates * * * from Brazil and Linton mines on the Milwaukee, from Princeton mines on the Southern and the Algers, Winslow & Western, and from Boonville are not here proposed to be changed and therefore are not specifically in issue in this proceeding." (263 I. C. C. 179; at 202.)

This statement shows that the hearing did not embrace the lawfulness of the present single-line rates of the Milwaukee to Beloit, even if such rates were republished in a schedule containing new rates.

Appellee cites the case of *Akron, C. & Y. Railway Co.* v. *United States*, 22 Fed. (2d) 199, 203, as sustaining the power of the Commission to increase or decrease existing rates in a proceeding under Section 15 (7) of the Act. The case is not pertinent, because there the Commission had by its order prescribed specific maximum rates on salt from Chicago, Detroit and Akron to New York. The Commission there was acting upon the proposed rates, and exercised the authority conferred on it by Sections 15 (7) and 15 (1) of the Act, viz: to enter such order respecting the new rates as it could if the proceeding had been initiated after the rates became effective (Section 15 (7)), which under Section 15 (1) it has the authority to prescribe a maximum or minimum rate or a maximum and minimum. In the *Akron* case it had exercised its power to prescribe a maximum rate in lieu of the suspended rate.

The power of the Commission in a proper case under Section 15 (7) to enter an order establishing a specific rate in lieu of the proposed rate under investigation is not questioned. The fact that such prescribed rate is different from the present rate, and so incidentally affects the present rate, does not prevent the Commission from exercising the authority granted to it by the Act. However, that situation is not present here. The Commission did not prescribe any new rates in lieu of the suspended rates. The Commission ordered that the suspended rates be cancelled; that order was a full and complete exercise of the power of the Commission. It did not affect the present rates; it fully disposed of the questions before the Commission, i. e., the lawfulness of the proposed rates.

Having disposed of the proposed rates, the Commission proceeds to enter an order directly, not incidentally, affecting the present rates. That part of the order was not within its authority in I. & S. No. 5139 to enter.

Appellee argues that strict rules of pleading and evidence are not applicable in proceedings before the Commission, it being an administrative body. The question is not one of technical pleading or of a variance between the right asserted and the right proven. The substantial objection is that the lawfulness of the present rates was not the subject matter of the hearing; the statutory authority of the Commission to act upon the present rates was never invoked by "an order for investigation and hearing" of the lawfulness of such rates; there was no hearing as to whether or not the present single-line rates of the Milwaukee were in violation of Section 2 of the Act; there was no hearing as to whether or not the present single-line rates of the Milwaukee in conjunction with the joint-line rates published by other carriers from mines in Indiana violated Section 3 (1) of the Act. There was no evidence directed to those questions. There was no evidence as to whether or not the proposed rates violated Section 3(1) of the Act in regard to the single-line rates of the Milwaukee, although several witnesses stated that it would be desirable to have uniform rates from all origins in a group to the same destination.

The cases cited by appellee in support of its contention are not applicable. For example, the case of *Alton & Southern Railroad* v. *United States*, 49 Fed. (2d) 414, 429-30, shows that there was voluminous evidence on the subject of icing charges and whether or not the line rates were sufficient to cover such charges; that the hearings before the Commission covered an extended period and the parties had opportunity to meet the issues developed in the hearing. In the case of *Spiller* v. *Atchison, Topeka & Santa Fe Ry. Co.*, 253 U. S. 117, 131-2, the primary

question was whether the Commission could rely on hearsay evidence received without objection. There was no question involved of an order of the Commission being entered on a subject not before it, and regarding which there was no evidence. None of the cases cited by appellee deal with the jurisdiction of the Commission in a proceeding under Section 15(7) of the Act to enter an order directed to the present rates alone, where it had ordered the cancellation of the suspended rates.

Appellee, at page 5 of its motion, makes marginal reference to certain pages of the transcript of testimony before the Commission as showing that the evidence dealt with the lawfulness of the present rates. These pages of the transcript are attached hereto as Appendix B, *infra*, pp. 39-49. In each instance but one that testimony, while mentioning present rates, was with respect to the relationship of the rates from the Indiana origin groups on the one hand and the Illinois groups on the other, evidence pertinent to the issues in Docket No. 28881. At transcript 1793-4, the witness was testifying regarding the rates to Beloit to which no change was proposed from Illinois, but where increases were proposed from Indiana, except via the single-line routes of the Milwaukee and from the Southern Railway origins; reference to the Exhibits Nos. 58 and 59 showed that the rates from Illinois produced lower ton mile earnings than the present rates from Indiana, and that the proposed rates from Indiana increased the ton mile earnings. In other words, the witness pointed out that at Beloit the average Illinois rate gave Illinois operators an advantage, which advantage would be increased by the proposed increased rates from Indiana.

That evidence does not deal with any question of whether the single-line rates of the Milwaukee were unlawful. It

was introduced to show that as between the Indiana groups and the Illinois groups the "standard differential" should be re-established to Rockford and other northern Illinois destinations in the 13th Section proceeding, Docket No. 28881. The Commission had so decided in the case of *Coal to Illinois and Wisconsin*, 232 I. C. C. 151, but because it did not there have jurisdiction over the Illinois intrastate rates, which it had in Docket No. 28881 currently before the Commission with I. & S. Docket No. 7139, the order never became effective.

Appellee, in its motion to affirm, quotes from exceptions filed by the Coal Trade Association of Indiana to the proposed report of the Examiner in an effort to show that the lawfulness of the present rates was before the Commission. Those quotations show that they dealt with the 13th Section case, Docket No. 28881, or with a combination of the two cases heard on the common record before the Commission. There we urged the Commission in its decision to restore the standard differentials as between the Indiana groups and the Illinois groups, which it was prevented from doing in its decision in *Coal to Illinois and Wisconsin*, 232 I. C. C. 151, for the reason stated above.

The Commission was hearing two cases. The position of the Indiana coal operators was that the intrastate rates in Illinois to Rockford, which had been reduced in 1930 by 17 cents per ton, without any corresponding reduction in the rates from Indiana, unduly preferred Illinois coal operators and unduly prejudiced Indiana coal operators, except those served by the Milwaukee on shipments to Rockford and other destinations in Illinois on the line of the Milwaukee. The proposed increased rates from Illinois origins substantially restored the reductions of 1930. We urged before the Commission that it had jurisdiction in the 13th Section case to correct intrastate rates, and in the Section

15 (7) case to correct the interstate rates proposed. There was evidence to sustain our contentions. That evidence dealt with the relationship of the rates from Indiana and the rates from Illinois; it did not deal with the lawfulness of the relationship between the rates from the Indiana origins, present or proposed, to these Illinois destinations.

We submit the appellants, coal operators of Indiana, are not estopped from urging the lack of jurisdiction of the Commission to enter the order here involved by anything said in any of their briefs, exceptions, or petitions before the Commission or by the evidence they introduced in the hearing before the Commission.

Appellee states we are merely seeking to have the Court substitute its judgment as to proper relationships for that of the Commission—that is not the fact. We want this Court to determine and rule that the Commission cannot enter an order that is not supported by findings of fact which in turn are supported by substantial evidence. We further want this Court to rule that where an investigation is undertaken to determine the lawfulness of proposed new rates, over a wide territory from an all coal producing area of a State, the Commission cannot enter an order cancelling said proposed new rates and also an order requiring the present rates of one carrier to a few destinations to be changed to correct alleged violations of the Act, when no one claimed such rates were in violation of the Sections of the Act referred to in the order and when there was no hearing on that subject.

We submit that the question of the authority and power of the Commission to enter an order directly affecting the present rates, after it had fully disposed of the issue before it, the lawfulness of the proposed rates, is substantial, and should be decided by this Court.

V.

There Are Substantial Questions Involved Which Are Not Discussed in the Motion to Affirm.

We have, we believe, shown that the questions involved in these appeals, which are discussed in the motion to affirm, are substantial. These appeals involve other questions which are substantial and are of importance generally as well as to the parties to these proceedings.

A.

Is the decision and order of the Commission arbitrary and capricious?

Here the distances from the Brazil group to Rockford and Beloit are somewhat shorter than from the Springfield group in Illinois, but the Commission has approved rates from Brazil 12 cents per ton higher than from Springfield. The Commission has stated that a few cents per ton frequently controls the sale of coal, yet the Commission approves rates 12 cents per ton lower from Springfield for a longer haul than from Brazil. That we submit is arbitrary and capricious, especially as the Commission states that rates from Indiana mines should be on the same level as those from Illinois mines.

The Commission approves rates from the group that average $1.95 per ton for an average distance to twelve destinations in Illinois, termed by it as representative, of 256 miles. To Rockford, the principal and most important market for coal in the whole destination area, the Commission approves rates from the Brazil group of $2.07 per ton for a haul of 251 miles. The Commission condemns as discriminatory, preferential and prejudicial the proposed single-line rate of the Milwaukee from origins on its line

in the Brazil group to Rockford of $1.95 per ton for a haul of 236 miles, but finds reasonable a rate of $1.95 per ton from Springfield for an average haul of 256 miles. Is that decision the rational conclusion to reach from the facts, or is it arbitrary and capricious?

There are numerous other instances of arbitrary and capricious results in the Commission's decision.

B.

Does the Commission have authority under the Act to require the Milwaukee to charge higher rates than it believes proper from origins served by it, because other carriers serving other origins in the same general area publish higher rates on which little or no coal moves?

C.

Does the Commission have the power to require the Southern Railway to reduce its rates from the Boonville group to the level of the rates from the Princeton group because one mine in the Princeton group, on the New York Central, is 10 miles distant across country from a mine on the Southern in the Boonville group? No evidence or claim was made that the Boonville rate is or would be unreasonable or otherwise violative of any provision of the Act; no finding was made by the Commission to that effect. The evidence shows that the haul is 40 miles longer via the Southern from mines in the Boonville group than from those in the Princeton group, and that as between the two groups the average difference in distance is 37 miles Boonville greater than Princeton. Earlier in its report the Commission approved a 10 cent differential as between mines in the Brazil and Linton groups where the difference in distance was 34 miles. Is that part of the Commission's

decision arbitrary and capricious? It is true the order did not require the carrier to publish the rate, but it approved the equality of the rates as between the two groups and stated that the cancellation of the proposed rates was without prejudice to publishing the approved rates.

D.

The Commission states in its report that it approved rates and rate bases set out in Appendixes A and D. It approved rates from each origin group in Indiana and Illinois to each of the twelve destinations in Illinois. Nowhere in the report is there any consideration of the reasonableness or lawfulness of the rates from any group to any one of the destinations. There is no discussion or finding with respect to whether or not the rates to any one of those destinations are preferential or prejudicial as between any of the groups or as between any of the destinations.

The rates and rate relationships so approved as between the various groups and individual destinations are inconsistent. For example, as between the Southern Illinois group, which has ordinarily been considered the base group in Illinois, and the Brazil-Clinton group in Indiana, which has been considered the base group in Indiana, the difference in distance from Southern Illinois and Brazil-Clinton at Belvidere, Illinois, is 170 miles, the difference in the approved rates is 18 cents per ton; to Rockford, where the difference in distance between Southern Illinois and Brazil-Clinton is 112 miles, the difference in the approved rates is 18 cents; but at Forreston, Illinois, the difference in distance is 83 miles and the difference in the approved rates 25 cents; and at Rochelle, Illinois, the difference in distance is 100 miles and the difference in the approved rates is 16 cents. Certainly, that is not the logical relationship ex-

pected of rates that are supposed to be reasonable, non-discriminatory, non-prejudicial and non-preferential. Other instances of the arbitrary and capricious character of the approved rates are as follows: to Belvidere, Illinois, the average distance from the Brazil-Clinton group is 250 miles, the approved rate is $2.07; from the Springfield group the average distance is 279 miles, the approved rate is $1.95. From the Princeton group to Belvidere the average distance is 364 miles, the approved rate $2.24, while from the Centralia, Belleville and DuQuoin groups in Illinois, the distances are 351 miles, 395 miles and 363 miles, respectively, and the approved rates $2.15. From the Southern Illinois group, for a distance of 428 miles, the approved rate is $2.25—one cent more than from Princeton. To Geneva, Illinois, for a distance from Brazil-Clinton of 217 miles, the approved rate is $1.84; from Springfield the distance to Geneva is 230 miles and the approved rate is $1.75. The average distance from all Indiana groups to Geneva is 266 miles and the average of the approved rates is $1.93. The average distance to Geneva from all the Illinois groups is 298 miles and the average of the approved rates is $1.88. Is it logical for the Commission to impose upon the Indiana operators a rate 5 cents higher for a haul 32 miles shorter than is imposed upon the Illinois operators? The Commission considered only the average of these arbitrary rates from the Illinois and Indiana groups to the whole of the twelve destinations rather than complying with the statute and determining just, reasonable and non-preferential rates to each destination from the origin groups involved.

We submit that the question of whether or not the decision of the Commission was arbitrary and capricious, under the circumstances of this case, is of vital importance not only to the parties to these proceedings but to the public generally.

E.

Inherent in this case is the power and authority of the Commission, directly or indirectly, to require all of the carriers serving various and different origin points in an area of wide extent, as one of the coal groups in either Indiana or Illinois, to charge the same rate from each of those origins via every route, irrespective of the traffic and transportation conditions on the various carriers involved and of the difference in the length of the hauls involved, merely because at some destinations those carriers think it is good business to meet the competition of another carrier by equalizing their rates with the rate of such other carrier. The Commission has characterized as a "dual basis of rates" a different rate charged by one carrier than by other carriers serving origins in the same group. This characterization is new in the language of the decisions of the Commission. It is a situation that has existed in this territory for years, both from groups in Illinois as well as in Indiana. This decision of the Commission raises a question, and it is a substantial one: can the Commission force a carrier to give up its rights to compete with carriers serving other origin groups in Illinois in order that its rates be the same as rates of carriers serving origins in the same general vicinity in Indiana?

Conclusion.

We do not know whether or not appellee's statement that it does not appear that notice of appeal was served upon the Attorney General of Indiana was intended as a basis to support the motion to affirm. The fact is that notice of the appeal was served on the Attorney General of Indiana and proof of service filed in the District Court within a few days after the allowance of the appeal.

We submit that the questions raised in this appeal are substantial; many of them have not been passed upon by this Court, and we urge that this Court accord to these proceedings a full and complete hearing.

Respectfully submitted,

Earl B. Wilkinson

Herbert A. Sa

Attorneys for Ayrshire Collieries Corporation, et al., Appellants in No. .....

.....

.....

Attorneys for Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Appellant in No. .....

Chicago, Illinois,
September 5, 1946.

APPENDIX A.

The Interstate Commerce Act, as amended, U. S. Code, Title 49, provides in part:

"Sec. 2. If any common carrier subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful."

"Sec. 3. (1) It shall be unlawful for any common carrier subject to the provisions of this chapter to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; *Provided, however*, That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description."

"Sec. 13. (1) Any person, firm, corporation, com-

pany, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this chapter, in contravention of the provisions thereof, may apply to said commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

* * *

"Sec. 13. (4) Whenever in any such investigation the commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will re-

move such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

"Sec. 15. (1) Whenever, after full hearing, upon a complaint made as provided in section 13 of this chapter, or after full hearing under an order for investigation and hearing made by the commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this chapter for the transportation of persons or property, as defined in the first section of this chapter, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this chapter, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this chapter, the commission is authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed,

as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

* * *

"Sec. 15. (7) Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the commission may by order require the interested carrier or carriers to keep accurate account

in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after September 18, 1940, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible."

Section 47 of U. S. Code, Title 28, provides:

"*Sec. 47. Interlocutory injunctions as to orders of Interstate Commerce Commission; appeal to Supreme Court.* No interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order made, or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless a majority of said three judges shall concur in granting such application. When such application as aforesaid is presented to a judge, he shall immediately call to his assistance to hear and determine the application two other judges. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the Interstate Commerce Commission, to the Attorney General of the United States, and to such other per-

sons as may be defendants in the suit. In cases where irreparable damage would otherwise ensue to the petitioner, a majority of said three judges concurring, may, on hearing, after not less than three days' notice to the Interstate Commerce Commission and the Attorney General, allow a temporary stay or suspension in whole or in part, of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of said judges pending the application for the order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judges making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The said judges may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until decision upon the application. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply. (Oct. 22, 1913, c. 32, 38 Stat. 220.)"

APPENDIX B.

Excerpts From Transcript of Testimony, Witness Harold V. Scott Testifying on Behalf of Coal Trade Association of Indiana, Being the Pages of the Transcript Referred to on Page 5 of Appellee's Motion to Affirm.

(p. 1793)

"Q. (By Mr. Wilkinson, on direct examination.) How do the earnings under the present and proposed rates from the Illinois groups compare with those from the Indiana groups to Beloit?

"A. Referring to my exhibit marked No. 58, this exhibit shows that to Beloit from a composite of the Illinois groups the average present rate, as shown under Column 7, reflects per ton-mile earnings of 6.65 mills and the average proposed rate 6.61 mills. The earnings from the Indiana groups to Beloit are higher, as shown under Columns 12 and 13.

"Q. How do the earnings from Southern Illinois compare with the earnings from Brazil-Clinton?

"A. Referring to my exhibit which has been marked No. 60, this exhibit shows that to Beloit, the present and proposed rates from Southern Illinois reflect ton-mile earnings of 6.09 mills and the present rate from Brazil-Clinton reflects earnings of 7.78 mills. The proposed rate from Brazil-Clinton reflects ton-mile earnings of 7.78 mills from the C. M. St. P. & P. mines and 8.41 mills from other mines. Again it will be noted that the earnings from the Southern Illinois group under the present rate is considerably lower than the earnings under the present and proposed rates from Brazil-Clinton.

"The same situation is reflected in the car-mile earnings."

(p. 1794)

"Q. The testimony and exhibits that you have presented are intended to prove, are they not, that the rates and differentials as now in effect and as now proposed to the northern Illinois destinations and as now proposed to Beloit are not proper. What is the contention of the Indiana operators as to what rates would be proper?

"A. It is our contention that the rates from Indiana to destinations in northern Illinois should be on the basis of their standard differential under Southern Illinois which was in effect prior to the 1930-1932 disruption. To Beloit, it is our contention that the rates should continue in effect the differential relationship with Southern Illinois, which relationship has been in effect for many years.

"Q. Do you have an exhibit showing what these rates would be?

"A. Yes, and it has been marked Exhibit No. 72. This is a statement showing the rates that would obtain from the Indiana groups to the representative destinations in northern Illinois and Beloit, Wisconsin, and to a composite of such representative destinations based on the standard differentials between the Indiana groups and the Illinois groups.

"These rates are arrived at in the following manner: The rates proposed from Southern Illinois to these representative destinations have been taken as the base group from the Illinois group. From the base group in Indiana, the Brazil-Clinton groups the rates shown on this exhibit have been made on their standard differential of 30 cents under Southern Illinois."

(p. 1845)

Cross-Examination.

"Mr. McElroy: In other words, the Illinois Commerce Commission did not allow the increase granted by the Interstate Commerce Commission simultaneously with the publication of the interstate rates.

"Mr. Biaett: This is correct.

"Mr. McElroy: So there is a gap of about 90 days before Illinois allowed the increase.

"Mr. Biaett: Yes, that is right.

"Exam. Trezise: Well, may we have it generally understood, then, that the present rate is $1.45 from Victoria to Rockford, Illinois, and it is proposed to increase it to $1.60, is that right?

"Mr. Biaett: Via the Burlington, which is the lowest rate from Victoria to Rockford, and the rate which we have shown throughout the exhibit.

"Exam. Trezise: And that is the longest distance and has probably a longer distance than the other route, and that distance being 198.1. That is the shortest route via the Burlington and its connections, is that right?

"The Witness: Yes, sir.

"Exam. Trezise: Thank you. Do we have some further questions now?

"Mr. Zoll: I had a couple of questions, Mr. Examiner.

"Exam. Trezise: Mr. Zoll:"

(p. 1846)

"Q. (By Mr. Zoll) Mr. Scott, as I understand your testimony, you are of the opinion that the present rates from Indiana to these northern Illinois destinations are unreasonable, in violation of Section 1, is that correct?

"A. The present rates are unreasonable in violation of Section 1? Yes. Our contention is that probably the strongest—our principal contention is that they are relatively unreasonable with relation to the rates from the Illinois fields.

"Q. In relation to the present rates from Illinois?

"A. Both present and proposed.

"Q. Then the answer to my question is yes?

"A. Yes, I modified it just a little.

"Q. Well, I wonder, if that is your opinion, why you have not previously filed any complaint against the rates?

"A. The answer to that question, Mr. Zoll, is this: That these rates have practically been in constant litigation, or have been constantly—have been actively handled by the carriers and the operators since these rates were first published in 1930. I don't know of a year that has gone by since then that there hasn't been some sort of an attempt to straighten out those rates. There has been no lapse of time that we filed a complaint that is before the Commission in the thirteenth section proceeding, or an I. & S. proceeding. They were before the Commission on the rates from the Milwaukee mines, which wound up in the Supreme Court. They were always in constant—these rates were constantly being acted on or rather I should say constantly considered with the purpose of straightening them out."

(p. 1847)

"Q. What was in my mind was this, that a statement that you believed the rates from Indiana unreasonably doesn't carry as much weight with me as it might, in view of the fact that you never bothered to do anything about it.

"A. I think if you will check the record in I. & S. Docket 4368, in which the carriers proposed to reestablish the normal differentials from the Brazil-Clinton group to most of these northern Illinois destinations but did not propose to do it from the Princeton-Ayrshire and Boonville group, you will find Indiana operators were very active in that proceeding, and were successful in that proceeding.

"Q. I understood you to say that the present rates from Indiana were unreasonable.

"A. Yes.

"Q. As they are today, and would continue to be so if these rates were not proposed in this I. & S. case.

"A. I don't quite—if these rates were not proposed. We don't agree with the proposed rates either, of course.

"Q. No. You think that the present rates from Indiana violate Section 1?

"A. Yes.

"Q. They are excessive? And they have done that for some years, I gather?

"A. Yes."

(p. 1848)

"Q. All right. It is also your opinion, then, also that the present and proposed rates from the Illinois mines violate Section 13 of the Act?

"A. Present rates from the Illinois and Indiana mines violate Section 13 of the Act. Yes, if I have stated your question right.

"Q. Well, I will put it this way: Is it not your opinion, as I read your testimony, that the present as well as the proposed rates from the Illinois mines are unduly low, in violation of Section 13?

"Mr. Morgan: I object. That is a legal conclusion.

"Mr. Zoll: No, it is not a legal conclusion. I am asking the opinion of this witness.

"Mr. Morgan: The witness is not a lawyer.

"Mr. Zoll: I didn't ask him if he is a lawyer.

"Exam. Trezise: I think we will let him answer this.

"Q. (By Mr. Zoll) I just wanted to know, Mr. Scott, what your opinion was. As I read Part 2 of your proposed statement, that is the impression I get of your position.

"A. That the rates from Illinois, both the present and proposed rates from Illinois, are in violation of Section 13?

"Q. Yes, sir.

"Mr. McElroy: He asked you if they were unduly low, in violation of Section 13.

"The Witness: They are—"

(p. 1849)

"Exam. Trezise: Well, about this violation of Section 13, I think that is objectionable. I will go along with you on that.

"Mr. Zoll: Well, I just call attention to the fact that the witness stated it on his direct.

"Exam. Trezise: Giving his opinion about the rates, yes.

"Mr. Wilkinson: I think you will find page 2 just states the contention and does not give an opinion; the contention we are making, which we trust the evidence supports.

"Q. (By Mr. Zoll) Well, you don't know offhand what your contention—

"Mr. Wilkinson: The objection has been sustained to your question.

"Mr. Zoll: I didn't understand so.

"The Witness: If I can have the question again—

"Q. (By Mr. Zoll) Your contention at the present time—

"Mr. Morgan: The objection has been sustained.

"The Witness: You are asking me to answer that and I don't know whether it has been objected to or not.

"Mr. Zoll: Let's start over.

"Q. (By Mr. Zoll) Do you contend that the present rates from the Illinois mines to these Illinois destinations are unreasonable?

"Mr. Morgan: If he knows."

(p. 1850)

"Mr. Zoll: I am merely asking for his position. I want to know what he is contending. Certainly there is nothing objectionable to that.

"Exam. Trezise: All right. That is his contention.

"The Witness: My contention is that the present rates from Illinois to these destinations are unreasonably low with relation to the rates from the Indiana fields.

"Q. (By Mr. Zoll) They must be unlawful, then?

"A. Yes.

"Mr. Cardy: We wouldn't need the court if we could put witnesses on to prove that.

"Mr. Morgan: The whole testimony on that line is objectionable and I think it should be stricken from the record.

"Exam. Trezise: I think we will let him give his opinion on it.

"Mr. Wilkinson: He was asked what his contention was and he has stated what the contention is.

"Exam. Trezise: Yes; we will let that stand.

"Q. (By Mr. Zoll) Now, in I. & S. 5139, the carriers have proposed certain increases in the rates. Is it your contention that the rates from the Illinois mines, as proposed, are improper or unlawful?

"A. Yes, with relationship to the rates from Indiana.

"Q. In view of the fact that you have said that the present rates from the Illinois mines are unduly low, have you in the"

* * * * *

(p. 1857)

"hitting the wrong button on the machine.

"A. That is right.

"Mr. Bather: While we are on Exhibit 72, I would like to ask Mr. Scott some questions.

"Exam. Trezise: Mr. Bather.

Cross-Examination (Continued).

"Q. (By Mr. Bather) On page 1 of this exhibit, you do advocate an increase in the rates from Indiana mines to Freeport and Rockford, do you not?

"A. Yes, because we have related our rates to

those proposed—in this particular exhibit we have related our rates to those proposed from Southern Illinois. However, the rates shown here whatever rates may be shown here should be related to those from Southern Illinois, if the rates proposed from Southern Illinois are approved. If any other basis is approved, then our rates as suggested here should be changed to correspond with the standard differentials with the Illinois rates.

"Q. And this proposal is based entirely upon your desire to maintain what you say are the standard differentials from Indiana mines?

"A. Yes, sir.

"Q. What consideration did you give to the consumers of coal in making this proposal?

"A. I think a very important consideration.

"Q. You must have, to have advocated an increase of 15 cents a ton."

(p. 1858)

"A. Well, first, now, I will have to answer that last question. I advocate that because the carriers are proposing increases in the rates from Illinois and these rates are based on that. I have no objection to the rates from Illinois remaining where they are and our rates adjusted to give us our rates based on standard differentials.

"Q. Do you subscribe to the proposal of the carriers that 15 cents a ton is justified?

"A. In the rates from—

"Q. The increase of 15 cents per ton in the present rates is justified?

"A. From where, Mr. Bather?

"Q. From Illinois, Indiana, or West Kentucky.

"A. I say the increase of 15 cents per ton as proposed is not justified from all groups because it then does not establish rates in their proper relationship.

"Q. Then why did you propose an increase in the rates from the Brazil-Clinton District to Rockford of from $1.80 to $1.95?

"A. If you will read the heading of this statement, you will notice it says, 'Statement Showing The Rates That would obtain from the Indiana Groups to the Representative Destinations and to a Composite of the Representative Destinations, Based on the Standard Differentials Between the Indiana Groups and the Illinois Groups.' I am not advocating those rates; I am showing what our rates should be based on the rates the carriers are advocating from the Illinois mines."

• • • • •

(p. 1874)

"ings. That is an obvious and accepted fact. And they are simply interested in an ability to move their coal in order to get those earnings.

"Q. (By Mr. Stadell) Yes, I am familiar with your theory on that, Mr. Scott.

"A. Thank you.

"Q. You stated, as I understood you in your direct testimony, that the present rates from the various Indiana groups to the Northern Illinois points involved are unjust and unreasonable under Section 1 of the Interstate Commerce Act.

"A. I believe that is—yes, that is true.

"Q. And on that basis, those rates being unjust and unreasonable should, in your opinion, be reduced to a just and reasonable basis, should they not?

"A. From Indiana?

"Q. Yes. You said they were unjust and unreasonable. Now, if they are unjust and unreasonable, they should be reduced to a reasonable basis.

"A. My contention is they are unjust and unreasonable, relatively speaking; that is with relation to the rates from Illinois.

"Q. In other words, you make a distinction between relative unreasonableness and intrinsic unreasonableness, is that right?

"A. That is right. My testimony here does not purport to go into the unreasonableness of rates *per*

se. It goes into the unreasonableness of the rates with relationship to the rates from Illinois."

(p. 1875)

"Exam. Trezise: And you are now talking about the present rates or the proposed rates?

"Mr. Stadell: He is talking about the present rates.

"The Witness: I am talking about both.

"Q. (By Mr. Wilkinson) In answer to that question, you are talking about the present rates, are you not, Mr. Scott?

"A. Yes, present rates. I thought he meant—

"Exam. Trezise: All right, present rates.

"Q. (By Mr. Stadell) And you are here, as I understand it, supporting the railroads' 13th Section petition for an increase in the present Illinois rates, intrastate rates, to Northern Illinois. That is your position, isn't it? That is what you said?

"A. No, I don't think that is my position by what I said, Mr. Stadell. I disagree with you.

"Q. Are you opposing that 13th Section petition?

"A. Neither am I opposing it. I am in it for the reason that I want the Commission, in settling these rates under Section 13 of the Act, and as well as under Section 3, to make rates from Indiana which are on their proper level as compared with the rates from Illinois.

"Now, it is not material to me whether the Interstate Commerce Commission arrives at that by increasing the rates from Illinois, by reducing the rates from Indiana or by increasing them partially from one and reducing them partially from the other."

(p. 1876)

"Q. Well, let's take—you say your present rates. Your present rates to these Northern Illinois points are unjust and unreasonable. Let's just take those as a starting point. That is what you said, isn't it?

"A. Yes.

"Mr. Wilkinson: Four times so far.

"Mr. Stadell: All right, the record will show that, Mr. Wilkinson, without your interruption.

"Q. (By Mr. Stadell) Now, what is the present rate—first I will ask you this: Would you say that Rockford, Freeport, and Dixon, Illinois, are the three most important of the representative suspended points involved in this proceeding, from a coal-consuming standpoint?

"A. Rockford and Freeport, and probably Dixon. I believe those are the most important, yes.

"Mr. Trezise: Are you bringing in Beloit too?

"Mr. Stadell: No, I am talking about Northern Illinois.

"Mr. Cardy: That is between Indiana nad Southern Illinois.

"Mr. Stadell: I am not talking about that. I am talking about the importance of them as coal-consuming points.

"Exam. Trezise: Just Northern Illinois.

"Q. (By Mr. Stadell) Now, what is the present rate from the Boonville, Indiana, group and from the Southern Illinois group to Rockford?"

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. 467

AYRSHIRE COLLIERIES CORPORATION, ET AL.,
Appellants,

vs.

UNITED STATES OF AMERICA, ET AL.,
Appellees.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY,
Appellant,

vs.

UNITED STATES OF AMERICA, ET AL.,
Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA.

BRIEF FOR AYRSHIRE COLLIERIES CORPORATION, ET AL., APPELLANTS.

EARL B. WILKINSON,
ARTHUR R. HALL,
Attorneys for Ayrshire Collieries Corporation, et al., Appellants.

SAMUEL W. WITWER, JR.,
J. ALFRED MORAN,
Of Counsel.

INDEX.

	PAGE
Opinions below	1
Statement of jurisdiction	2
Statutes involved	2
Statement of the case	3
History and background of Commission proceeding	5
The origin groups	9
Distances and rates	10
Transportation and operating conditions and circumstances	13
Production and movement of coal	15
The Princeton and Boonville groups	17
Specification of errors to be urged	19
Summary of argument	25
Argument	28
I. Two members of a statutory three-judge Court convened to hear and determine a proceeding to enjoin an order of the Interstate Commerce Commission cannot determine such case when the third judge of the Court is unable to and does not participate in such determination	28
II. The order of the Commission to remove unjust discrimination in the present rates from Indiana origins to destinations in northern Illinois is not supported by findings of fact or by evidence	32

III. The conclusion that the present and proposed rates from Indiana to destinations in northern Illinois result or would result in undue preference and prejudice as between origins in the Brazil and Linton groups and as between the respective Indiana groups in violation of Section 3 (1) of the Act, and the order to cease and desist from such violation and maintain rates which will avoid and remove such violation, are not supported by findings of fact or by evidence 45

IV. The Commission had no authority to order an increase in or change in the relationship of the present rates from Indiana in the proceeding I. & S. Docket No. 5139 62

V. The Commission had no authority or jurisdiction in I. & S. Docket No. 5139 to approve rates from the Boonville group on a parity with rates from the Princeton group, or to enter any order requiring the present rates to be on a parity 69

VI. The Commission had no authority or jurisdiction to approve specific rates to each of a number of widely separated destinations in northern Illinois on the basis of the average of the rates and distances from each origin group to all the destinations, where the amounts of such rates and the relationships in the rates from the various origin groups vary at the different destinations 72

VII. The Commission has no authority under the Act to require the Milwaukee or any other carrier to charge higher rates than such carrier believes to be proper from origins served by it in the Brazil and Linton groups because other carriers serving other origins in those groups maintain higher rates 75

VIII. The order of the Commission is arbitrary and capricious because not supported by adequate and suitable findings of fact or by evidence, and the report affords no rational basis therefor 79

A. There is no basis in law or in fact to justify the conclusion of the Commission that rates from all origins in a group must be equal to common destinations 79

B. The report fails to disclose any logical or rational basis of fact or law for the rates and rate relationships approved in the report and is therefore arbitrary and capricious 81

C. The report fails to disclose any logical or rational basis of fact or law for the rates and rate relationships approved to Beloit, and its approval of rates to Beloit is arbitrary and capricious 87

D. The report and order are arbitrary and capricious in that the approved rates would insure Illinois operators a practical monopoly in the Beloit and northern Illinois markets 89

Conclusion 92

Appendix 95

CITATIONS.

Cases.

A. E. Staley Mfg. Co. v. Baltimore & Ohio R. Co., 262 I. C. C. 352, 356 ..... 54, 55

Atchison, Topeka & Santa Fe Ry. Co. v. United States, 284 U. S. 248, 262 ..... 65, 66

Anchor Storage Co. v. Alton R. Co., 211 I. C. C. 307, 309 57

Central Railroad Co. of New Jersey v. United States, 257 U. S. 247, 257 ..... 57, 58, 59

Cincinnati Meat Packers Association v. Alton R. Co., 258 I. C. C. 687, 692 ..... 38, 39

Chicago Live Stock Exchange v. Abilene & Southern Ry. Co., 223 I. C. C. 141, 152 54

Chicago, Milwaukee, St. P. & P. R. Co. v. United States, 8 Fed. Supp. 970, 974 ..... 7, 77, 79

Coal from Indiana to Illinois, 197 I. C. C. 245; 200 I. C. C. 609 7

Cumberland Telephone & Telegraph Co. v. Louisiana Public Service Commission, 260 U. S. 212, 216, 217, 218 ..... 30, 31

Dohany v. Rogers, State Highway Commissioner, 281 U. S. 362, 369, 370 32

Dunn Woolen Co. v. Baltimore & O. R. Co., 220 I. C. C. 223, 226 57

Eastern-Central Assn. v. United States, 321 U. S. 194, 200-203 ..... 44, 61

Fairbanks-Morse & Co. v. Alton & Southern R., 251 I. C. C. 181, 201-206 ..... 7, 8, 51

Florida v. United States, 292 U. S. 1, 6, 7 79

Gar Wood Industries, Inc. v. Alton & S. R. Co., 263 I. C. C. 611, 616 39

Illinois Coal Traffic Bureau v. Ahnapee & W. Ry. Co., 204 I. C. C. 225, 241 ..... 60, 61, 84

Interstate Commerce Commission v. Alabama Midland Ry. Co., 168 U. S. 144, 166 36

Interstate Commerce Commission v. Baltimore & O. R. Co., 145 U. S. 263, 281-282 ..... 35, 36

Intrastate Rates on Bituminous Coal in Illinois, 182 I. C. C. 537 6

Jones & Kavanagh Co. v. Southern Pacific Co., 219 I. C. C. 105, 107 57

L. T. Barringer & Co. v. United States, 319 U. S. 1, 6, 9 37

Manufacturers Ry. Co. v. United States, 246 U. S. 457, 481 55

Michigan Fertilizer Co. v. Louisville & N. R. Co., 214 I. C. C. 585, 587 54

Morgan v. United States, 304 U. S. 1, 18 66

Petroleum Between Washington, Oregon, Idaho, and Montana, 234 I. C. C. 609, 648 ..... 37, 38

Petroleum Rail Shippers' Assn. v. Alton & S. R., 243 I. C. C. 589, 639 38

Ryan v. Pennsylvania Public Utility Commission, 44 Fed. Supp. 912, 914 31

Texas & Pacific Ry. Co. v. United States, 289 U. S. 627, 636, 637, 646 ..... 55, 56, 57, 78, 86, 87, 90

Traffic Bureau, Lynchburg Chamber of Commerce v. Norfolk & Western Ry. Co., 248 I. C. C. 203, 208 ... 38

United States v. Chicago Heights Trucking Co., 310 U. S. 344, 348, 351 ..... 36, 37, 51

United States v. Chicago, Milwaukee, St. Paul & Pacific R. Co., 294 U. S. 499, 504, 506 ..... 7, 60, 67, 71, 72, 75, 76, 80, 90

United States v. Illinois Central R. Co., 263 U. S. 515, 521 55
Virginian Railway Co. v. United States, 272 U. S. 658, 672 31

Statutes.

Interstate Commerce Act, as amended:
Sec. 2 (U. S. C., Title 49, Sec. 2) 96
Sec. 3 (1) (U. S. C., Title 49, Sec. 3 (1)) 96, 97
Sec. 13 (1) (U. S. C., Title 49, Sec. 13 (1)) 97
Sec. 13 (4) (U. S. C., Title 49, Sec. 13 (4)) 98
Sec. 15 (1) (U. S. C., Title 49, Sec. 15 (1)) 98, 99
Sec. 15 (7) (U. S. C., Title 49, Sec. 15 (7)) 99, 100
Urgent Deficiencies Act of Oct. 22, 1913, c. 32, 38 Stat. 208, 220 (U. S. C., Title 28, Sec. 47) 95, 96

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. 467

AYRSHIRE COLLIERIES CORPORATION, ET AL.,
Appellants,

vs.

UNITED STATES OF AMERICA, ET AL.,
Appellees.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY,
Appellant,

vs.

UNITED STATES OF AMERICA, ET AL.,
Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA.

BRIEF FOR AYRSHIRE COLLIERIES CORPORATION, ET AL., APPELLANTS.

OPINIONS BELOW.

No opinion was rendered by the District Court. The findings of fact and conclusions of law (R. 108-111) have not been reported.

The report of the Interstate Commerce Commission (R. 164-221) in the case entitled "I. & S. Docket No. 5139,

Coal to Beloit, Wis., and Northern Illinois," is reported in 263 I. C. C. Reports, pages 179-226.

STATEMENT OF JURISDICTION.

The final decree of the District Court was entered June 5, 1946. (R. 111.) Petition for appeal was filed July 30, 1946, and allowed August 1, 1946. (R. 112, 119.) The jurisdiction of this Court rests upon the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 220 (U. S. C., Title 28, Sec. 47a) and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U. S. C., Title 28, Sec. 345). Probable jurisdiction was noted by this Court on October 21, 1946. (R. 1675.)

STATUTES INVOLVED.

The pertinent provisions of the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 220 (U. S. C., Title 28, Sec. 47) and Sections 2, 3 (1), 13 (1), 13 (4), 15 (1) and 15 (7) of the Interstate Commerce Act (U. S. C., Title 49, Secs. 2, 3 (1), 13 (4), 15 (1) and 15 (7)) are printed in the Appendix (*infra*, pp. 95-100).

STATEMENT OF THE CASE.

This is an appeal from the final decree of the specially constituted District Court for the Southern District of Indiana, entered June 5, 1946, dismissing appellants' petitions to enjoin, set aside, annul or suspend, in whole or in part, an order of the Interstate Commerce Commission, entered July 9, 1945, in a proceeding before the Interstate Commerce Commission entitled "I. & S. Docket No. 5139, Coal to Beloit, Wis., and Northern Illinois."

The order of the Interstate Commerce Commission (hereinafter throughout this brief referred to as the "Commission") required the railroad carriers to cancel certain new rates on bituminous coal from mines in Indiana, Illinois and western Kentucky to destinations in northern Illinois and Beloit, Wisconsin, which were published in tariff schedules filed to become effective on or about August 2, 1942, which schedules were suspended by the Commission by its order of investigation and suspension entered July 30, 1942. (R. 141-144.)

The order of July 9, 1945, further required the respondent carriers, "according as they participate in the transportation, * * * (1) to cease and desist from practicing the unjust discrimination under Section 2 of the Interstate Commerce Act and the undue prejudice and preference under Section 3 (1) of the Act, found in said report to exist, and (2) to publish, maintain, and apply rates and charges which will avoid and remove the said unjust discrimination and undue prejudice and preference," in the rates for the transportation of bituminous coal from mines in Indiana to Rockford and other destinations in northern

Illinois. (R. 222.) It is this part of the order which appellants, Ayrshire Collieries Corporation, *et al.*, seek to have enjoined and set aside.

The I. & S. Docket No. 5139 proceeding was initiated by a complaint (R. 131) filed with the Commission on July 16, 1942, by the Coal Trade Association of Indiana on behalf of its members, appellants in the case of *Ayrshire Collieries Corporation, et al.* v. *United States*, seeking suspension of and investigation into the lawfulness of certain new rates published to become effective August 2, 1942, and later, for the transportation of coal from mines in Indiana to Beloit, Wisconsin, and to Rockford, Illinois, and some seventy other destinations in northern Illinois in the vicinity of Rockford. All rates published by each of the carriers serving mines in Indiana were increased by the same amounts to the same destinations in northern Illinois. No new rates to Beloit, Wisconsin, were published by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, hereinafter called the "Milwaukee," via its direct lines, or by the Southern Railway Company, hereinafter called the "Southern", from mines on its lines or from mines on the lines of the Algers, Winslow & Western Railroad, hereinafter referred to as the "A. W. & W.," with which the Southern connects. (R. 1645-1651, 1658-1661.)

The Commission on July 30, 1942, entered an order which recited the filing of schedules of new rates; enumerated the supplements to the tariffs containing such schedules; ordered that "the Commission upon complaint, without formal pleading, enter upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in the said Schedules contained in said tariffs"; and suspended the operation of the schedules contained in such tariffs. (R. 141-144.)

Subsequent to the said order of July 30, 1942, carriers serving mines in Illinois filed a complaint (R. 145-159) with the Commission under Section 13 of the Interstate Commerce Act alleging that the rates on coal moving in intrastate commerce within Illinois were unduly preferential and prejudicial as between persons and localities in intrastate and interstate commerce and unjustly discriminatory against interstate commerce. This proceeding was entitled "Bituminous Coal Rates Within Illinois, Docket No. 28881." (R. 159-161.)

Hearings in I. & S. Docket No. 5139 and Docket No. 28881 and two cases pending before the Illinois Commerce Commission were held before an Examiner of the Commission and representatives of the Illinois Commerce Commission upon a common record. Thereafter on July 9, 1945, the Commission filed its report covering both said proceedings and entered its order in I. & S. Docket No. 5139. (R. 164-221, 222.)

Appellants filed a petition with the Commission to reopen, rehear and reconsider said report and order in I. & S. Docket No. 5139, which petition was denied by the Commission by order entered November 13, 1945. (R. 223.)

History and Background of Commission Proceeding.

The various coal origin groups or districts referred to in the report of the Commission and in the evidence are the result of the general, but not universal, practice of the railroads serving mines in the same vicinity publishing the same rates from those mines to a particular destination. There are five such groups in Indiana, four of which are important and are referred to herein, eight in Illinois and one in western Kentucky. (R. 1066-1068.)

The differences in the predominant rates from origin groups to destination are referred to as "differentials",

where the same difference applies to destinations generally. As between the Indiana groups, the same differentials apply to all destinations in Iowa, Minnesota and Wisconsin. For example, from the Linton-Sullivan group the rates are 10 cents per ton more than those from the Brazil-Clinton group, the rates from the Princeton-Ayrshire group are 7 cents per ton more than from the Linton-Sullivan group, and the rates from the Boonville group are 3 cents per ton more than from the Princeton-Ayrshire group. (R. 1068.) In the report of the Commission and hereinafter the Brazil-Clinton, Linton-Sullivan and Princeton-Ayrshire groups are referred to as the Brazil, Linton and Princeton groups, respectively.

To all destinations in northeastern Iowa, southeastern Minnesota and Wisconsin, except a narrow strip along Lake Michigan, the rates from the Brazil group are 30 cents per ton less than the rates from the Southern Illinois group, and are the same as the rates from the Springfield, Illinois, group. Prior to 1930, the same relationship with the Illinois groups existed at destinations in northern Illinois. (R. 1069-1070.)

In 1930, the intrastate rates from the Illinois groups to Rockford, Freeport, Dixon, Chicago and certain other points in Illinois were reduced under orders of the Illinois Commerce Commission. The reduction to Rockford amounted to 17 cents per ton. No reduction was made in any of the rates from the Indiana groups to any of those destinations. (R. 1070; Exhibit No. 4, Sec. I, p. 9; R. 1676.) The Commission, in *Intrastate Rates on Bituminous Coal in Illinois*, 182 I. C. C. 537, ordered the Illinois intrastate rates (except the rates to Rockford, Freeport and Dixon, and certain intermediate points) restored to their former level.

The Milwaukee, which serves only mines in the Brazil

and Linton groups in Indiana, and reaches Rockford and Freeport by its own lines, immediately after the decision of the Commission in *Intrastate Rates on Bituminous in Illinois,* 182 I. C. C. 537, filed tariffs reducing, by the same amount the Illinois intrastate rates had been reduced, the rates from mines served by it in Indiana to Rockford, Freeport and other destinations on its line intermediate to Rockford. These reduced rates applied only via the Milwaukee single-line route from mines to destinations. The Commission suspended the rates of the Milwaukee, and, after hearing, filed its report and order requiring that such rates be cancelled. *Coal From Indiana to Illinois,* 197 I. C. C. 245; 200 I. C. C. 609.

On petition of the Milwaukee, filed in the United States District Court for the Northern District of Illinois, the order of the Commission was permanently enjoined, *Chicago, Milwaukee, St. P. & P. R. Co.* v. *United States,* 8 Fed. Supp. 970. On appeal, this Court affirmed the decree of the District Court, *United States* v. *Chicago, Milwaukee, St. Paul & Pacific R. Co.* (1934), 294 U. S. 499.

The Commission, in the case of *Fairbanks-Morse & Co.* v. *Alton & Southern R.,* 251 I. C. C. 181, decided March 3, 1942, entered an order requiring rates on coal from Illinois, Indiana and western Kentucky to Beloit, Wisconsin, not to exceed the rates from the same origins to Rockford by more than 15 cents per ton. The new rates involved in I. & S. Docket No. 5139 were filed in a purported effort by the carriers to comply with said order. (R. 277-278.)

Contemporaneously with the filing by carriers serving Indiana of the tariffs to become effective August 2, 1942, which tariffs are the subject of the suspension proceeding I. & S. Docket No. 5139, the carriers serving coal mines in Illinois filed with the Illinois Commerce Commission tariffs which increased rates from such mines to Rockford and the same destinations in northern Illinois to which the interstate rates from Indiana had been increased. The amounts

of the increases from the mines in Illinois to these destinations were generally the same as those from the mines in Indiana, although to many of the destinations the increases from the Illinois mines were less than from the Indiana mines. (R. 1076-1077.)

At the time of the entry of the order in the *Fairbanks-Morse & Co.* case, the rates on coal from all origins in Illinois to Beloit were 30 cents per ton more than the rates from the same origins to Rockford. The rates from the Indiana mines to Beloit were 30 cents per ton higher than the rates to Rockford via the direct line of the Milwaukee from mines served by it; via other carriers serving Indiana the rates to Beloit were in some instances 18 cents and others 13 cents per ton higher than the rates to Rockford. (Ex. No. 4; R. 1676.)

The new and suspended tariffs of all carriers serving Illinois, Indiana and western Kentucky increased the rates to Rockford by 15 cents per ton. (R. 257.) The carriers serving Illinois and western Kentucky mines did not publish new rates to Beloit. The Milwaukee did not publish new rates to Beloit via its line direct, which resulted in a difference between its new rates to Rockford and its present rates to Beloit of 15 cents per ton. The Southern did not publish new rates from the Princeton and Boonville groups to Beloit, which made its new rates published to Rockford 3 cents per ton under the continuing rates from mines on its line in the Princeton and Boonville districts to Beloit. The rates from mines on the A. W. & W. via the Southern to Rockford and Beloit are and would be the same as from mines in the Princeton group on the Southern. The other carriers serving Indiana mines published new rates to Beloit 15 cents per ton higher than their new rates to Rockford. (R. 1109-1112.)

The Origin Groups.

In each coal origin group are many points of origin. In the Brazil group are 25 origin points; 4 served by the Milwaukee, 10 by the Chicago & Eastern Illinois Railroad Company; 7 by the Pennsylvania Railroad Company; 3 by the New York Central Railroad Company; and 5 by the Baltimore & Ohio Railroad Company. One point is served by two carriers, and one point, Terre Haute, by four carriers. Carriers do not publish rates from all the origins served by them to all destinations; for example, rates are published from 13 origins in the Brazil group to Amboy, Illinois, and from all 25 origins to Belvidere, Illinois. (Ex. No. 28, page 13; R. 1686.)

The rates are not always uniform from all origins in a group to the same destination; for example, there are 29 origins in the Princeton group, and to Belvidere, Illinois, from 20 of the origins the rate is $2.09 per ton, from the 7 origins on the A. W. & W. the rate is $2.22 per ton and from the 2 origins on the B. & O. the rate is $2.14 per ton, while to DeKalb, Illinois, the rates are the same from all origins. Of the 29 origins in the Princeton group 6 are served by the Southern, 16 by the New York Central, 1 by the C. & E. I., 2 by the B. & O., and 7 by the A. W. & W. Three of the 29 origins are served by two carriers. (Ex. No. 28, pp. 1 and 2; R. 1686.)

There are 27 origins in the Linton group, 9 of which are served by the Milwaukee, 3 by the Pennsylvania, 5 by the C. I. & L. (The Monon), 5 by the New York Central, 5 by the C. & E. I., and 4 by the Illinois Central. Two origins are served by two carriers and one is served by three carriers. (Ex. No. 28, p. 7; R. 1686.)

All origins in the Boonville group are served by the Southern Railway. (Ex. No. 28, p. 1; R. 1686.)

Distances and Rates.

The distances from the various origins in a group to a destination differ considerably. For example, from the Brazil group, via the direct line of the Milwaukee to Rockford, the distance varies from 228 miles to 256 miles, while from origins on the Pennsylvania the distance varies from 258 to 283 miles. The average distance from all origins in the group to Rockford is 251 miles, and from Milwaukee origins 237 miles. (Ex. No. 28, p. 15; R. 1686.) These distances are via the shortest tariff route from each origin, which means that if two or more carriers serve one origin point the distance via the route of the carrier having the shortest route is used, and where an origin is served by one carrier the distance via the shortest route of that carrier is used. (R. 897-898.)

Coal does not necessarily move via these routes; for example, from origins in the Brazil group on the Pennsylvania no coal moves over the routes distances for which are shown in Exhibit No. 28. Coal from those origins consigned to Rockford would be hauled to Chicago by the Pennsylvania and there turned over to another carrier for movement to Rockford, a distance of 387 miles, not the distances of 258 to 283 miles shown in the exhibit. From origins in the Linton group served by the Pennsylvania the distance to Rockford via the route of movement via Chicago, is 415 miles, not the distances of 283 to 306 miles shown in Exhibit No. 28, at page 9. (R. 1489-1490.)

To destinations in northern Illinois on its own line the rates of the Milwaukee from origins on its line in the Brazil group are from 4 to 17 cents less than the rates published by other carriers serving origins in that group. To DeKalb, the Milwaukee rate was $1.80 for distances of 191, 193, 197 and 219 miles, while via other carriers the rate was $1.84 for distances ranging from 197 to 246 miles.

To Byron, the rate of the Milwaukee was $1.80 for hauls of 225, 227, 232 and 254 miles; via the other carriers, except the Pennsylvania, the rate was $1.90 for distances ranging from 231 to 292 miles; via the Pennsylvania the rate was $1.97 for distances of 231 to 281 miles, but for actual hauls much longer. (Ex. No. 28, p. 14; R. 1490, 1686.)

The foregoing are typical of the rates and distances from the various origins served by the Milwaukee to destinations on its line in Illinois and the rates and distances of other carriers serving origins in the same group.

The situation with respect to the Illinois groups to the same destinations is the same as that in Indiana, that is, distances from origins in a group on one carrier vary from origins in the same group on another carrier. To some destinations the rates are published from all origins in a group and are the same; to some destinations, rates are published from some origins and not from others; and to some destinations one or two of a number of carriers serving origins in a group publish higher or lower rates than a majority of the carriers. (Ex. No. 27; R. 1685.)

The various exhibits of the carriers and the Indiana coal operators showing average distances from the origin groups show the average of all short tariff route distances via each railroad and all origins in a group served by such railroad. The exhibits of the Illinois coal operators show the distances via the shortest tariff route from each origin point in a group, eliminating the short tariff routes of those carriers serving an origin which are longer than the shortest route of any of the carriers serving such origin. The Commission adopted the method of computing distances used by the Illinois operators. (Report of Commission, 263 I. C. C. at page 187; R. 174.) Exhibits Nos. 27 and 28 above referred to use that method. (R. 895.)

The evidence showed the average distance from all origins in each group to each of twelve destinations selected

by the carriers and Illinois coal operators as typical or representative destinations in northern Illinois. Exhibit No. 27 (R. 1685) shows the distances from each origin in each of six of the origin groups in Illinois, the rate and the average distances from said groups to each of said twelve destinations; the average distance and a so-called average rate from each of the eight groups in Illinois to each of the twelve destinations, and the average distance and a so-called average rate from all Illinois groups to all of the twelve destinations. Exhibit No. 28 shows the same data for the Indiana groups to the same twelve destinations. (R. 1686.)

In Appendix A to the report of the Commission, 263 I. C. C. 220-223, are shown the average distance, the present rate, the proposed (suspended) rate, the rate approved in I. & S. Docket No. 4368 and the rate approved in this proceeding to each of the said twelve destinations in northern Illinois and Beloit, Wisconsin. (R. 213-217.) The distances shown are those appearing in Exhibits Nos. 27 and 28 (R. 1685-1686), except that some of the distances, for example to Polo, Rockford, and Beloit, are not as shown in said exhibits. The Commission shows the distance from the Belleville group to Beloit as 358 miles; Exhibit No. 27 shows the distance to be 380 miles. The Commission shows the distance from Centralia as 283 miles; Exhibit No. 27 shows the distance as 331 miles. To Rockford, the Commission shows the distance from Belleville as 332 miles, in Exhibit No. 27 it is shown as 339 miles; and from the Linton group in Indiana the Commission shows the distance to Rockford as 300 miles, while Exhibit No. 28 shows it as 292 miles.

In Appendix D to its report, 263 I. C. C. 226, the Commission sets forth the average distances and the average rates, present and proposed, from each group in Indiana and Illinois to all the twelve so-called representative des-

tinations in Illinois, which distances and average rates appear in Exhibits Nos. 27 and 28. In the same appendix are shown averages of the rates approved by the Commission from each group to all of said twelve destinations, and the percent such averages of approved rates are of each of two distance scales prescribed by the Commission in other cases. (R. 220.)

Transportation and Operating Conditions and Circumstances.

The conditions under which the Milwaukee transports coal from mines on its line to Rockford and other destinations on its line in northern Illinois are favorable. The smallest engine used from concentration yards in the Brazil group handles trains of 5800 gross tons to Hallock and 6400 gross tons to Faithorn; either the large or smaller type engines will handle trains of 90 to 95 cars of mixed loads and empties, as the grades do not affect the operation. (R. 780.) There is no passenger service on the line from Indiana to Chicago. From Bensenville (the Chicago freight yard) the Milwaukee handles trains of 3350 to 4500 gross tons to Savanna, Illinois, depending on the type of engine used, and that line is double track main line for high speed. The Terre Haute division has an adequate amount of double track for good operation. (R. 781.) Solid train loads of coal move from the Indiana fields, but the Milwaukee tries to operate so as to pick up other cars at interchange points between the coal fields and Faithorn, its northern terminal near Chicago. Indiana and Illinois coal destined to Rockford moves through Davis Junction and trains on that line handle 5000 gross tons. (R. 782.) Most coal from Illinois origins for destinations on the Milwaukee is received by the Milwaukee at Mendota, Illinois, and from Mendota to Davis Junction an engine

handles 3000 gross tons. The same engine in the Indiana territory handles 4500 gross tons to Bensenville, the Chicago yard. (R. 785.)

The Milwaukee receives coal from other carriers serving Indiana coal mines at junctions in Indiana, but none from the Pennsylvania. (R. 791.)

The location of grades is important in their bearing on operating conditions; the momentum of the train approaching the grade is important; the comparison of a .5 per cent grade on one railroad with a .5 per cent grade on another is meaningless, unless you know the location of each grade and the tonnage actually handled over such grades. (R. 792.) Grades in the lines from the assembly yards to the mines do not affect the operations on the Milwaukee. (R. 797.) The line of the Milwaukee from Terre Haute to Bensenville yard is exceptionally straight. The operating conditions from Terre Haute to Chicago are better than from Chicago to Savanna. (R. 799.)

There are coal mines on the C. & E. I. in the Brazil and Princeton groups in Indiana. There are also mines on the C. & E. I. in the Linton group, but none of them are operating. Exhibit No. 18 shows distances from loading (origin) points on the C. & E. I. to Chicago from all groups which it serves and the amount of double track. (R. 803.) Exhibit No. 19 shows distances to Chicago, miles of single and double track, number of break-up points, maximum grades and curves and ratings on engines used. (R. 804.) The witness was unable to make any comparison of the operating conditions on the Milwaukee and the C. & E. I. from origins served by those carriers. (R. 805.)

No evidence was offered respecting the operating conditions or circumstances affecting the transportation of coal from Indiana origins to northern Illinois via the Pennsylvania, New York Central, Monon (C. & I. L.), B. & O., Illi-

nois Central, Southern, A. W. & W. or Indiana railroads, other than the distances from origin points on such lines via short and shortest tariff routes.

Production and Movement of Coal.

The amount of coal transported from Indiana via any railroad to any destination was not shown, except the percentage of coal handled by the Milwaukee to Rockford was stated for "a recent period" as 95.4 per cent of the total from the Brazil group and 78.5 per cent of the total from the Linton group. (R. 525-526.)

Exhibit No. 4, Section VIII, in the Commission record shows the tonnages of coal moved from each of the origin groups in Illinois and Indiana to Beloit, Wisconsin, and DeKalb, Dixon, Freeport, Geneva, Rochelle, Rockford and Sterling, Illinois, destinations involved in this proceeding, for the first six months of 1941, the last six months of 1941 and the first six months of 1942, and also shows the movement of coal to three destinations in Wisconsin. This exhibit shows that in each period the Southern Illinois group shipped more coal to each of the destinations than all the balance of Illinois and Indiana combined. (R. 236, 1677.)

Exhibit No. 99 of the Commission record compares the shipments from all Illinois mines and all Indiana mines to the seven destinations in Illinois and Beloit, Wisconsin, shown in Exhibit No. 4, Section VIII. That exhibit shows that the Illinois groups shipped 546,822 tons to the Illinois points in 1936 and 568,872 tons in 1941, and that Indiana groups shipped 121,368 tons to the seven Illinois points in 1936 and 268,707 tons in 1941. It shows that to Rockford the shipments from Indiana increased from 51,347 tons in 1936 to 211,561 tons in 1941. Omitting Rockford, Indiana in 1936 shipped 70,021 tons of coal to the other six

Illinois points. In 1941, to those six points, Indiana shipped 57,146 tons, approximately 13,000 tons less than in 1936, a loss of 18 per cent in its tonnage. Excluding Rockford, the Illinois groups shipped 338,793 tons to the six Illinois destinations in 1936 and 292,771 tons in 1941, a loss of 46,000 tons, or 13 per cent less. (R. 1504, 1697.).

Exhibit No. 100 shows the shipment of coal from all groups in Illinois and Indiana as a whole and from each of the groups to all destinations in Indiana, except the Chicago Switching District, during the years from 1923 to 1941, inclusive. (R. 1506, 1697.)

Exhibit No. 101 of the Commission record shows shipments from Illinois, Indiana and western Kentucky groups to all destinations, except destinations in Indiana, for the years 1923 to 1941, inclusive. The exhibit shows the same data to all destinations in Illinois, other than the Chicago Switching District and East St. Louis, for the years 1923 to 1941, inclusive. Similar information is shown regarding the Chicago Switching District as such. The exhibit shows that total shipments from Illinois to all destinations declined from 48,401,000 tons in 1923 to 29,768,000 tons in 1941, whereas Indiana shipment to all destinations declined from 14,549,000 tons in 1923 to 12,498,000 tons in 1941. (R. 1507-1510, 1697.)

The exhibit further shows that in 1932 there was a decided increase in the tonnage shipped from the Princeton group in Indiana to all destinations and a decided reduction in the tonnage shipped from the Boonville group in Indiana. Further evidence of record shows that in 1930 or 1931 the New York Central Railroad for the first time published from mines that had theretofore taken the Boonville rates, the rates applicable from the Princeton group, and those mines were thereafter treated as a part of the Princeton group, leaving only a few mines on the Southern Railway in the Boonville group.

Exhibit No. 101 also shows that Boonville and Princeton shipped 3,460,000 tons in 1931 and 3,784,000 tons in 1932, which was not as large an increase in 1932 as the whole State or the Brazil group enjoyed. Illinois, particularly Southern Illinois, has lost tonnage in Iowa, Wisconsin and other territories north and west of Illinois, which has made the northern Illinois market more important than it was in 1923.

The Princeton and Boonville Groups.

The Princeton district in Indiana is served by five carriers. The Boonville district in Indiana is served only by the Southern Railway, which also serves mines in the Princeton group. The mines in the Boonville group are all small mines, with one exception. The one large mine in the Boonville group is about ten miles from a large mine in the Princeton group, located on the New York Central. The difference in distance from mines on the Southern Railway in the Princeton group to Rockford, Illinois, for example, and mines on the Southern Railway in the Boonville group to Rockford is 49 miles. The distance from all mines on the New York Central Railroad in the Princeton group to Rockford is 51 miles shorter than from all mines on the Southern in Boonville to Rockford. (Ex. No. 41; R. 1063, 1688.) (See also Ex. No. 28; R. 898, 1686.) To Freeport, however, while the distance from the mines on the Southern in the Princeton group is 49 miles shorter than from the Boonville group on the Southern, the distance from the mines on the New York Central in the Princeton group is 2 miles greater than the distance from the Boonville mines.

The mines in the Boonville group are served by a branch of the Southern Railway, extending from Huntingburg, Indiana, to Evansville, Indiana. Mines on the Southern

in the Princeton group are on the main line running from Louisville, Kentucky, through Huntingburg to St. Louis, Missouri. (R. 826.) Coal from Boonville is moved to Huntingburg, thence over the main line to the connections of the Southern with carriers serving northern Illinois and Wisconsin. The haul from the Boonville mines would be shorter if the coal moved via Evansville, Indiana. (R. 835.) Operating conditions make the haul through Huntingburg preferable to the Southern Railway. (R. 840-841.)

SPECIFICATION OF ERRORS TO BE URGED.

1. The Court below erred in holding that two members of a statutory three-judge District Court, convened under the provisions of U. S. Code, Title 28, Section 47, may determine a case pending before such Court when the third member of the Court is unable to and does not participate in such determination. (Assigned as Error No. 1.) (R. 114.)

2. The Court below erred in not holding that the conclusion of the Commission that the existing rates from mines in Indiana to destinations in northern Illinois result in unjust discrimination, as between shippers of coal transported in whole or in part by the Milwaukee or Illinois Central railroads, in violation of Section 2 of the Act, and in undue preference and prejudice, as between the origins in the Brazil and Linton districts and as between the respective Indiana districts, in violation of Section 3 (1) of the Act, and the order of the Commission to remove such alleged violations are not supported by findings of fact in the report of the Commission or by substantial evidence in the record before the Commission. (Assigned as Error No. 19.) (R. 117.)

3. The Court below erred in not holding that there is no evidence in the record before the Commission from which comparisons can be made of the circumstances and conditions of the transportation service involved in the transportation of coal from mines in the Brazil and Linton groups in Indiana to destinations in northern Illinois via the single-line of the Milwaukee, with the circumstances and conditions of the transportation service involved in the transportation of coal from mines on other railroads

in those groups via joint-line routes from such mines to said destinations. (Assigned as Error No. 5.) (R. 115.)

4. The Court below erred in not holding that there is no evidence in the record before the Commission and no findings of fact in the report of the Commission that, but for the lower single-line rates of the Milwaukee, shipments of coal would have moved from mines on other railroads in the Brazil and Linton groups, or any other groups in Indiana, to Rockford and other destinations in northern Illinois to which the Milwaukee maintains lower rates via its single-line than the joint-line rates maintained by other carriers serving origins in said groups. (Assigned as Error No. 6.) (R. 115.)

5. The Court below erred in not holding that there is no evidence in the record before the Commission and no findings of fact in the report of the Commission that the rates published by the Milwaukee from origins on its line in the Brazil and Linton groups accorded shippers from such origins any undue preference or subjected any other shipper or mine in said groups, or any receiver of freight at a destination on the line of the Milwaukee, to any undue prejudice or disadvantage. (Assigned as Error No. 8.) (R. 115-116.)

6. The Court below erred in not holding that there is no evidence in the record before the Commission and no findings of fact in the report of the Commission that the Milwaukee effectively controls the rates to destinations in northern Illinois from the mines served by other carriers in any Indiana group. (Assigned as Error No. 7.) (R. 115.)

7. The Court below erred in not holding that the Commission entered no order for an investigation and hearing concerning the lawfulness of the existing rates on coal from mines in Indiana to Rockford or other destinations

in northern Illinois. (Assigned as Error No. 4.) (R. 115.)

8. The Court below erred in not holding that the Commission had no jurisdiction or authority in the I. & S. Docket No. 5139 proceeding to enter an order with respect to the relationship between the present rates of the Milwaukee, via its direct line from origins on its line in the Brazil and Linton groups to destinations on its line in Illinois, and the present rates of other carriers from other origins in said groups or other Indiana groups to the same destinations in Illinois. (Assigned as Error No. 17.) (R. 117.)

9. The Court below erred in not holding that the Commission had no jurisdiction or authority in the I. & S. Docket No. 5139 proceeding to enter an order with respect to the present rates from mines in Indiana to destinations in Illinois, except as such existing rates might be affected indirectly by an order of the Commission with regard to the suspended rates, and that the Commission, having ordered that such suspended rates be cancelled, was without jurisdiction or authority to enter any order in said proceeding respecting the present rates from the Indiana mines to destinations in Illinois. (Assigned as Error No. 18.) (R. 117.)

10. The Court below erred in not holding that the Southern Railway, having published no new rates from points of origin in Indiana to Beloit, Wisconsin, and the Milwaukee, having published no new rates from points of origin served by it in Indiana via its direct lines to Beloit, Wisconsin, the existing rates of said railroads were not in issue and the Commission had no jurisdiction or authority in the I. & S. Docket No. 5139 proceeding to make any findings with respect to said rates, or with respect to the relationship of the said rates and the proposed increased

rates of other carriers serving mines in Indiana, or to enter any order respecting the said rates of the Southern Railway and the Milwaukee from Indiana origins to Beloit, Wisconsin. (Assigned as Error No. 20.) (R. 117-118.)

11. The Court below erred in not holding that there is no evidence of record before the Commission and no findings of fact in the report of the Commission that the rates from the Boonville group in Indiana to any destination were unreasonable, or that the rates from the said Boonville group or the rates from the Princeton group to any destination, subjected the Boonville group to an unjust discrimination or unduly prejudiced the Boonville group or shippers therein or unduly preferred the Princeton group and the shippers therein. (Assigned as Error No. 10.) (R. 116.)

12. The Court below erred in not holding that the Commission had no authority in the I. & S. Docket No. 5139 proceeding, on the evidence of record in that proceeding, to make any finding that the rates from the Boonville group should be on the same level as the rates from the Princeton group to any destination involved. (Assigned as Error No. 22.) (R. 118.)

13. The Court below erred in not holding that the Commission had no authority to approve or prescribe rates or rate relationships from a number of origin groups to a number of individual destinations on the basis of the average of the rates from each group to all of the destinations, where such rates vary from destination to destination and the relationships of the rates from the different origin groups vary as between destinations. (Assigned as Error No. 23.) (R. 118.)

14. The Court below erred in not holding that the Milwaukee and the Southern Railway had the right to initiate and maintain such rates as those carriers deemed proper

until such time as the Commission found, in a proceeding instituted by an order of the Commission for an investigation and hearing concerning the lawfulness of such rates, and on the basis of substantial evidence, that such rates violated one or more provisions of the Interstate Commerce Act. (Assigned as Error No. 21.) (R. 118.)

15. The Court below erred in not holding that the report of the Commission contains no findings of fact to support the conclusion that the rates approved in said report to Rockford and specific destinations in northern Illinois are reasonable, non-discriminatory, non-prejudicial and non-preferential. (Assigned as Error No. 9.) (R. 116.)

16. The Court below erred in not holding that the report and order of the Commission of July 9, 1945, are unfair, arbitrary and discriminate against plaintiffs. (Assigned as Error No. 11.) (R. 116.)

17. The Court below erred in not entering a decree perpetually enjoining the order of the Commission of July 9, 1945, in so far as said order requires the carriers to change existing rates from mines in Indiana to destinations in Illinois and authorizes and permits the carriers serving mines in Indiana to establish rates on the basis of the rates approved by the Commission. (Assigned as Error No. 26.) (R. 119.)

18. The Court below erred in holding that the Commission's report and order entered July 9, 1945, were made within its statutory authority and are supported by adequate findings of fact. (Assigned as Error No. 12.) (R. 116.)

19. The Court below erred in holding and deciding that the findings of the Commission as set forth in the report and order of July 9, 1945, have substantial support in the record made before the Commission and afford a

rational basis for its conclusions. (Assigned as Error No. 13.) (R. 116.)

20. The Court below erred in holding that the plaintiffs were afforded a full and fair hearing before the Commission and the record made before the Commission discloses no error of law. (Assigned as Error No. 14.) (R. 116.)

21. The Court below erred in holding that the report and order of the Commission are lawful and valid in all respects. (Assigned as Error No. 15.) (R. 117.)

22. The Court below erred in dismissing the plaintiffs' complaints. (Assigned as Error No. 16.) (R. 117.)

SUMMARY OF ARGUMENT.

I.

Two members of a statutory three-judge District Court, convened under the provisions of U. S. Code, Title 28, Section 47, cannot determine a case pending before such Court when the third member of the Court is unable to and does not participate in such determination.

II.

That part of the order of the Commission requiring the carriers serving Indiana to cease and desist from practicing and to avoid and remove the unjust discrimination in violation of Section 2 of the Interstate Commerce Act found in the report to exist is not supported by findings of fact or by evidence. The evidence shows only that the Milwaukee publishes rates via its single line from origins served by it in the Brazil and Linton groups to Rockford and other destinations on its line in Illinois, which rates are lower than rates published by other carriers serving other origins in those groups in Rockford, and that in some of those other rates the Milwaukee participates as an intermediate or terminal carrier. There being no findings and no evidence of facts that constitute a violation of Section 2 of the Act, that part of the order of the Commission to cease and desist from such alleged violation should be enjoined.

III.

That part of the order of the Commission requiring the respondents to cease and desist from practicing the undue prejudice and preference in violation of Section 3 (1) of

the Act found in the report to exist, and to publish rates that will remove such undue prejudice and preference, is not supported by findings of fact or by evidence. There is no evidence and no finding of any facts with respect to the rates from the Indiana groups, as between themselves, to any Illinois destination that constitute a violation of Section 3 (1) of the Act. Therefore, that part of the order requiring a change in the present rates to remove the alleged undue prejudice and preference should be enjoined.

IV.

The Commission had no jurisdiction or authority in the proceeding, I. & S. Docket No. 5139, to enter any order to remove unjust discrimination or undue prejudice and preference in the present rates. The only issue before the Commission in that proceeding was the legality of the new rates which had been suspended by the order of the Commission of July 30, 1942. The Commission entered no order for an investigation and hearing respecting the lawfulness of and no hearing was entered into with respect to the legality of the present rates from Indiana. The order of the Commission of July 9, 1945, required the cancellation of the suspended rates. The order did not require the publication of any other rates in lieu of the cancelled rates; it merely stated that the order was "without prejudice to the establishment of rates on the bases approved in the said report," but did not require such publication. That part of the order that requires changes in the present rates is beyond the jurisdiction of the Commission. The conclusion of the District Court that plaintiffs were accorded a full and fair hearing before the Commission with respect to the present rates from Indiana to Illinois destinations is erroneous. The further conclusions of the District Court that the record made before the Commission discloses no error of law is likewise erroneous.

V.

The Commission had no authority or jurisdiction in the I. & S. Docket No. 5139 proceeding to approve or prescribe rates from the Boonville group on a parity with rates from the Princeton group to destinations in Illinois, or to enter any order requiring such a parity in the present rates. The matter was not involved in the hearing, and there is no evidence to sustain such order or such approved rates.

VI.

The Commission had no authority or jurisdiction to approve or prescribe specific rates or rate relationships from a number of origin groups to each of a number of widely separated destinations in northern Illinois, on the basis of the average of the rates and distances from each group to all the destinations, where the amounts of such rates vary and the relationships between the origin groups vary at the different destinations.

VII.

The Commission has no authority under the Act to require the Milwaukee to charge higher rates than it believes to be proper from origins served by it in the Brazil and Linton groups because other carriers serving other origins in those groups publish higher rates. Each carrier has the right to publish such rates as it deems proper so long as those rates do not violate some provision of the Act.

VIII.

The order of the Commission is arbitrary and capricious because it is not supported by adequate and suitable findings of fact or by evidence, and also because the facts found and stated in the report afford no rational basis for the conclusions and order.

ARGUMENT.

I.

Two Members of a Statutory Three-Judge Court Convened to Hear and Determine a Proceeding to Enjoin an Order of the Interstate Commerce Commission Cannot Determine Such Case When the Third Judge of the Court Is Unable to and Does Not Participate in Such Determination.

On December 21, 1945, appellants filed their petition in the District Court of the United States for the Southern District of Indiana, seeking temporarily and permanently to enjoin or suspend, in whole or in part, an order of the Commission entered in I. & S. Docket No. 5139, *Coal to Beloit, Wis. and Northern Illinois.* (R. 1-40.) Circuit Judge Evans and District Judge Igoe were assigned to sit with District Judge Baltzell to hear and determine the case. (R. 50.) Judge Baltzell became ill, and Circuit Judge Major was assigned to sit as District Judge in the place and stead of Judge Baltzell. (R. 106.) By agreement of all parties the hearing was held in Chicago before the Court consisting of Judges Evans, Major and Igoe. (R. 107.) Subsequent to the hearing, Judge Evans became ill and unable to participate in the determination of the causes. The findings of fact, conclusions of law and judgment were made and entered by the remaining two Judges of the statutory court. (R. 108.)

The pertinent provisions of the statute, U. S. Code, Title 28, Section 47 (which appears in full at pages 95-96, *infra*), are as follows:

> "No interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or

setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge unless *the application* for the same shall be presented to a circuit or district judge, and *shall be heard and determined by three judges*, of whom at least one shall be a circuit judge, and unless a majority of said three judges shall concur in granting such application. * * *; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply." (Emphasis supplied.)

The provision that the application shall be heard and determined by three judges, with a majority concurring in the decision, would be nullified if two judges could determine the case. The determination of the case by three judges imports a joint consideration of the case by all three of the judges. Such consideration would involve an exchange of views and a discussion of any conflicting ideas by three judges, not by two. To permit two judges acting alone to decide a case nullifies the statutory purpose of securing the benefit of joint consideration and determination of three judges.

The statute provides that at least one of the three judges shall be a circuit judge. To say that two judges could, if in agreement, determine the application would nullify this provision in cases where the circuit judge became disabled and two district judges determined and decided the case. The provision that at least one member of the three-judge court shall be a circuit judge, supports our contention that the hearing and determination be by all three members, because it is to be presumed that Congress intended the statutory court to have the benefit of the experience of the circuit judge as a reviewing judge.

The statute provides for hearing and determination by three judges. Each phase is equally important. A hearing by three judges, and determination by two, is more inconsistent in actual practice with the intent of the statute than a hearing by two judges and a determination by three. Yet it is doubtful that anyone would urge that a hearing by two judges would satisfy the statute.

We have been unable to find any decision in which this precise question was involved, but there are several decisions that involve similar questions, and they lead to the conclusion that the two judges, acting alone and without the benefit of the views of the other member of the three-judge court, had no authority to determine these cases, or enter a final decree therein.

In the case of *Cumberland Telephone & Telegraph Co.* v. *Louisiana Public Service Commission*, 260 U. S. 212, 216-217, a statutory three-judge court had denied an application for an injunction against an order of the Louisiana Public Service Commission. On application of the complainant, one member of the court entered an order granting a supersedeas and continuing the original restraining order until the appeal from the final decree could be determined. There this Court said (pages 216 and 217):

> "The wording of the section (Sec. 266 of the Judicial Code) leaves no doubt that Congress was by provisions *ex industria* seeking to make interference by interlocutory injunction from a federal court * * * a matter of the adequate hearing and the full deliberation which the presence of three judges, one of whom should be a Circuit Justice or Judge, was likely to secure. * * * We are of the opinion that a single judge has no power, in view of Sec. 266, to affect the operation of the order of the court constituted by the three judges granting or denying the interlocutory injunction applied for. To hold that he may grant a temporary injunction varying the order of the three judges would be to make the legislation a nullity and work the result which Congress was at great pains to avoid."

In the cited case the judge granting the stay stated that one of the other judges concurred in so doing. This Court said with respect thereto (page 218):

> "This statement does not make the order here in question the act of the three judges. Judge Bryan's letter * * * was a mere expression of opinion that Judge Foster as District Judge had the power to grant the injunction, an opinion with which we do not agree. * * * Nor is there any showing that Judge Clayton took part in the matter. A discussion in conference of the judges as to the granting of an injunction pending an appeal before it was applied for does not supply what is needed to give efficacy to such order by a single judge. Compliance with the statute requires the assent of the three judges given after the application is made evidenced by their signatures or an announcement in open court with three judges sitting followed by a formal order tested as they direct. * * * We have no proper evidence of the participation of the three judges in the injunction here and therefore grant the motion to set it aside as void and made without jurisdiction."

Section 266 of the Judicial Code (28 U. S. C. 380) is substantially the same as the provisions of the statute governing proceedings to enjoin an order of the Interstate Commerce Commission (28 U. S. C. 47). In both there is a provision for hearing and determination by three judges, with a majority concurring in the order. See *Virginian Railway Co.* v. *United States*, 272 U. S. 658, at 672.

In *Ryan* v. *Pennsylvania Public Utility Commission*, 44 Fed. Supp. 912, 914, upon application to a statutory court for an injunction pending appeal, it is said:

> "The Court which heard the case at bar on its merits, however, cannot sit to hear the plaintiffs' application for an injunction pending an appeal because one of its members was commissioned as an officer in the United States Army on March 26, 1942 and is not available."

In *Dohany* v. *Rogers, State Highway Commissioner*, 281 U. S. 362, the Court held that a decree of a statutory three-judge court signed by one judge, which recited that (p. 369) "the court * * * being fully advised in the premises, do now here order, adjudge and decree", showed action of the three-judge court—not just the action of one judge. This decree was supported by an opinion signed by two of the judges and a concurring opinion signed by the third judge, of which the Court said (p. 370): "This we think equivalent for that purpose to an announcement in open court, three judges sitting."

We submit that only two judges of the specially constituted District Court convened to hear and determine these cases had no authority to determine the causes in the absence of the third judge of the court, and that those two judges acting alone had no authority to make and enter findings of fact, conclusions of law and final judgment in these causes.

II.

The Order of the Commission to Remove Unjust Discrimination in the Present Rates from Indiana Origins to Destinations in Northern Illinois Is Not Supported by Findings of Fact or by Evidence.

The order of the Commission of July 9, 1945, requires the carriers according as they participate in the transportation "(1) to cease and desist from practicing the unjust discrimination under section 2 of the Interstate Commerce Act * * * found in said report to exist, and (2) to publish, maintain, and apply rates and charges which will avoid and remove the said unjust discrimination * * *." (R. 222.)

The report of the Commission does not contain findings of fact to support the conclusion that any rates are unjustly

discriminatory within the meaning of Section 2 of the Act, as plainly stated therein and as that Section has been construed by this Court and the Commission.

There are findings of fact in the report to the effect that the Milwaukee in 1932 "reduced its single-line rates from mines served by it in the Brazil and Linton districts in Indiana to Rockford, Freeport, and other northern Illinois destinations in the same amount as the Illinois intrastate rates to the same destinations had been reduced in 1930"; that "this resulted in a dual basis of rates from the Brazil and Linton districts," in that the rates of the Milwaukee were lower from mines served by it than the rates of other carriers serving mines on their lines in those groups; that "subsequently, the Illinois Central met the lower rates of the Milwaukee from the Linton district by establishing the same basis of rates from Linton mines served by it over its single-line routes to northern Illinois destinations"; and that "respondents now propose to extend the dual basis of rates so it would also apply from the Indiana groups to Beloit." (Finding No. 3; R. 205-206.)

The Commission further found that "the average distances over the single-line routes of the Milwaukee and of the Illinois Central are approximately the same as, and in some instances less than, those over the joint-line routes from the same origin districts to the same destinations, and are little different from the average distances thereto from all of the mines in the respective districts"; that "the present and the proposed rates from mines on the Milwaukee and the Illinois Central are lower than the present and the proposed rates from the mines on the lines of the other respondents (carriers) serving the Brazil and Linton districts"; that "the Milwaukee and the Illinois Central participate in many of the routes over which such higher rates apply to the same destinations to which they

maintain and are here proposing their lower single-line rates"; that "the Milwaukee serves 4 of the 30 origins in the Brazil district and 9 of the 31 origins in the Linton district" and that, "in a recent representative period, it hauled 95.4 per cent of the coal moving from the Brazil group and 78.5 per cent of the coal moving from the Linton group to Rockford"; and that "in general, all of the mines in these districts produce coal of the same grade and quality, and a difference of a few cents per ton in the transportation charge is normally sufficient to divert a coal contract from one mine to another." (Finding No. 4; R. 206.) "The Milwaukee and the Illinois Central join in rates from the Princeton and Boonville groups to these northern Illinois destinations which reflect differences between those groups on the one hand, and the Brazil and Linton points served by those respondents on the other, that are substantially greater than the so-called standard differentials and greater than are warranted by the respective differences in distance." (Finding No. 5; R. 207.) "Normally, there is severe competition in the marketing of coal in the destination territory between the mine operators in each of the origin groups, and between the respective Indiana, Illinois, and western Kentucky groups." (Finding No. 7; R. 207.) "The transportation conditions under which coal moves from Indiana and Illinois groups to these northern Illinois destinations are sufficiently similar to require the use of the same rate basis from all of such groups." (Finding No. 8; R. 207.)

The foregoing is a summary of the only findings of fact made by the Commission which are pertinent to the question of unjust discrimination under Section 2.

On the basis of those findings the Commission reached the following conclusion:

> "The present and proposed rates from Indiana to the northern Illinois destinations, as published in the

tariffs enumerated in Appendix E to this report, result or would result in unjust discrimination as between shippers and receivers of coal transported in whole or in part by the Milwaukee or the Illinois Central railroads, in violation of Section 2 of the act. * * *" (Conclusion 1; R. 210.)

Section 2 of the Interstate Commerce Act, *infra*, p. 96, provides as follows:

> "If any common carrier subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered or to be rendered, in the transportation of passengers or property, subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful."

In construing Section 2 of the Act, this Court has stated repeatedly that the purpose of this Section is to enforce equality between shippers of like commodities over the same line or haul, the same distance and between the same points; that the discrimination aimed at is that between individual shippers and not as between localities and communities; and that any fact or facts that produce an inequality of conditions and a change of circumstances justifies an inequality of charge.

In the early case of *Interstate Commerce Commission* v. *Baltimore & O. R. Co.*, 145 U. S. 263, this Court said, at pages 281-2:

> "In order to constitute an unjust discrimination under section 2, the carrier must charge or receive

directly from one person a greater or less compensation than from another, or must accomplish the same thing indirectly by means of a special rate, rebate or other device; but in either case it must be for a 'like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar circumstances and conditions.' * * * 'To come within the inhibition of said sections, the differences must be made under like conditions; that is, there must be contemporaneous service in the transportation of like kinds of traffic under substantially the same circumstances and conditions.''

In *Interstate Commerce Commission* v. *Alabama Midland Ry. Co.*, 168 U. S. 144, this Court said, at page 166:

"As we have shown in the recent case of *Wight* v. *United States*, 167 U. S. 512, the purpose of the second section is to enforce equality between shippers over the same line, and to prohibit any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor; and we there held that the phrase 'under substantially similar circumstances and conditions,' as used in the second section, refers to the matter of carriage, and does not include competition between rival routes.''

In the more recent case of *United States* v. *Chicago Heights Trucking Co.*, 310 U. S. 344, in construing the applicability of like provisions of the Motor Carrier Act, Mr. Justice Black, speaking for the court (p. 348), pointedly observed that "if the suspended rates were in effect, *transportation of the same commodity over the same haul* might cost a forwarder less than other shippers" and that "local less-than-truck-load rates charged shippers are in many if not most instances greater than rates on *like commodities between the same points* to be afforded forwarders under the proposed tariffs which the Commission ordered cancelled." (Emphasis supplied.) Further, at page 351:

"* * * the Act represented a manifestation of the

congressional purpose * * * to prevent favoritism by insuring equality of treatment on rates for substantially similar services. * * *"

In the case of *L. T. Barringer & Co.* v. *United States*, 319 U. S. 1, this Court sustained the finding and conclusion of the Commission that the charges there involved did not result in unjust discrimination under Section 2 and said, at page 6:

"Section 2 is aimed at the prevention of favoritism among shippers. * * * But differences in rates as between shippers are prohibited only where the 'circumstances and conditions' attending the transportation service are 'substantially similar.'"

Further, at page 9:

"We have repeatedly sustained a finding of the Commission that such a difference, based on a difference in identity of shippers or the ownership of the goods shipped, or on other circumstances irrelevant to the carrier service rendered, is an unjust discrimination to shippers. * * * The distinction between those cases and this is that here *the difference in the service charge is made between through shippers over different routes*, and is based on relevant differences in the 'circumstances and conditions' of the total transportation services rendered by the carriers. It was within the competence of the Commission to find that this inolved no unjust discrimination." (Emphasis supplied.)

The Commission through a long line of decisions by it has adhered to the interpretation of Section 2 by this Court.

In the case of *Petroleum Between Washington, Oregon, Idaho, and Montana*, 234 I. C. C. 609, at page 648, it is said:

"Complainants say that the disparities against them resulting from the present and proposed rates from the northern Montana points constitute the violation of section 2 alleged in their complaint without

particularity. *However, their traffic does not originate at the same points as that of their competitors, and therefore section 2 does not apply.*" (Emphasis supplied.)

In *Petroleum Rail Shippers' Assn. v. Alton & S. R.*, 243 I. C. C. 589, at page 639, the Commission said:

> "As to alleged violation of section 2 of the act: In *Pacific Lbr. Co.* v. *Northwestern Pac. R. Co.*, 51 I. C. C. 738, 760, division 1 said:
>
> > 'The purpose of section 2 of the act is to enforce equality as between shippers, and to prohibit any rebate or other device by which two shippers shipping over the same line, the same distance, under the same circumstances of carriage are compelled to pay different prices therefor. *Wight* v. *U. S.*, 167 U. S. 512, 517.'
>
> "And in *Standard Oil Co.* v. *Director General*, 87 I. C. C. 214, division 3 said, in discussing section 2:
>
> > 'If the movements are over different lines, the service is substantially dissimilar. *Tide Water Oil Co.* v. *Director General*, 62 I. C. C. 226.'
>
> "There is *no showing* herein, nor even a contention, *that different rail shippers are charged different rates for the same line-haul transportation service from origin to final destination.* There is, therefore, a *complete failure of proof as regards the alleged violation of section 2.*" (Emphasis supplied.)

In *Traffic Bureau, Lynchburg Chamber of Commerce* v. *Norfolk & Western Ry. Co.*, 248 I. C. C. 203, 208, the Commission concluded:

> "It is sufficient to say that upon the facts described no unjust discrimination in violation of section 2 would result as the compared transportation would not commence at the same origins."

Cincinnati Meat Packers Association v. *Alton R. Co.*, 258 I. C. C. 687, 692, is another instance where the Com-

mission concluded there had been no violation of Section 2, saying.

> "Complainant's allegation that the rates assailed violate section 2 of the Interstate Commerce Act is untenable. The unjust discrimination condemned by that section is that which would result from the charging of different rates for performing like and contemporaneous service in the transportation of like kinds of traffic under substantially similar circumstances and conditions of carriage *by the same railroad or railroads between the same points.* Section 2 is primarily directly against discrimination between shippers located in the same community." (Emphasis supplied.)

In *Gar Wood Industries, Inc.* v. *Alton & S. R. Co.*, 263 I. C. C. 611, 616, the Commission declined to hold that rates there assailed had been shown to be unjustly discriminatory because:

> "The provisions of section 2 apply only when the transportation is from and to the same points."

The Commission here made twenty major findings of fact. (R. 205-210.) Nowhere in those findings is it stated, and there is no evidence in the record before the Commission, that any of the coal from any origin point to any destination was being charged a higher rate than other coal from the same origin point to the same destination moving over the same line under substantially similar circumstances and conditions. Finding No. 4 of the Commission does not state any facts which constitute a violation of Section 2 of the Act. The finding shows on its face that there are 30 origin points in the Brazil group and 31 origin points in the Linton group; that the Milwaukee serves but 4 of the origins in the Brazil group and 9 in the Linton group.

The evidence affirmatively shows that the Milwaukee

rates, where lower than those of other carriers serving other origins in the Brazil and Linton groups, are via the single-line of the Milwaukee from origin to destination, while the rates in which the Milwaukee joins from origins in those groups on the lines of other carriers to such destinations are via two or more lines of railroad. In many instances the hauls via such joint-line routes are 50 to 100 miles longer than via the single-line routes of the Milwaukee. (Ex. No. 28; R. 1686.)

The evidence shows that these so-called groups or districts cover a large area. (Ex. No. 1; R. 486-A.) The origins within the groups are frequently many miles apart. The short tariff route distance from West Clinton, Indiana, to Rockford is 228 miles via the single-line of the Milwaukee; the short tariff route distance from Center Point, Indiana, on the Pennsylvania Railroad to Rockford is 283 miles, a difference in haul of 55 miles. To Geneva, Illinois, from West Clinton the single-line haul of the Milwaukee is 176 miles; the short tariff route distance via the Pennsylvania from Center Point is 294 miles, a difference of 118 miles. (Ex. No. 28; R. 1686.)

From mines in the Brazil group on the New York Central to Rockford the short tariff route distances are 275 and 283 miles, respectively, and are as much as 55 miles longer than the single-line distance from origins on the Milwaukee. The average distance from those origins on the New York Central is 42 miles greater than the average distance from origins on the Milwaukee. To Geneva, Illinois, the New York Central distances exceed Milwaukee distances by from 31 to 59 miles. (Ex. No. 28, p. 15; R. 1686.)

The distances via the short or shortest tariff routes are not necessarily the distances or routes over which coal moves from origin point to destination. For example, the distances from origins on the Pennsylvania in the Brazil

group to Rockford are shown in Exhibit No. 28 to be 275 and 283 miles, and from origins in the Linton group to be 306 miles. These distances are via routes in connection with the Milwaukee at Terre Haute and Beehunter, Indiana (Ex. No. 28, pp. 9, 14, 27; R. 1686), but the Pennsylvania has never turned over any coal to the Milwaukee at Terre Haute or Beehunter. (R. 1490.)

The practice prohibited by Section 2 of the Act is the charging, demanding or receiving a greater or less amount from one than from another shipper for performing a like and contemporaneous service under substantially similar circumstances and conditions. There is evidence that coal moved via the single-line route of the Milwaukee to Rockford; there is no evidence that any coal ever moved from any origin in the Brazil or Linton groups served by other carriers over routes in which the Milwaukee participates; there is no evidence that any coal would ever move via such routes. There is therefore no evidence upon which the Commission could predicate a finding or conclusion that there is, has been, or would be a like contemporaneous service performed in the transportation of coal from the Brazil or Linton groups via the Milwaukee alone and by other carriers in connection with the Milwaukee.

There can be no violation of Section 2 of the Act unless it is established as a fact that like and contemporaneous service for which differing rates are charged is performed "under substantially similar circumstances and conditions." There is no evidence upon which to base a finding or conclusion that transportation of coal from origins on lines of carriers other than the Milwaukee to any destination in northern Illinois is substantially similar to the transportation of coal from origins on the Milwaukee in Indiana via its single-line to destinations in northern Illinois or Beloit. The transportation conditions and circumstances in handling coal from Indiana to those destina-

tions via the single-line of the Milwaukee are in evidence in full, but there is not a word of evidence regarding the conditions or circumstances of transporting coal from any Indiana origin on the line of any of the ten (10) other carriers serving origins in the Indiana coal origin groups, except a *pro forma* showing by the C. & E. I. Railroad of distances from but two junction points in Indiana to Chicago, a point not involved in this case, the miles of single and double track, maximum grades and curves and engine ratings between certain junction points and Chicago. (R. 803-804.) The witness testifying on behalf of the C. & E. I., after hearing the witness describe the conditions on the Milwaukee, could not make any comparison of the conditions on the two roads. (R. 805.) The engine ratings given for the C. & E. I. were for a certain type of engine—there was no evidence that engines of that type were used in transporting coal from Indiana to Chicago, or what loads the engines in actual use normally haul; there was no evidence as to whether the grades and curves were so located as to hinder operations or as to be inconsequential. No witness appeared for and there is no evidence whatever in the record made before the Commission of the circumstances and conditions of the transportation of coal from origins in Indiana via the New York Central, Pennsylvania, Illinois Central, Baltimore & Ohio and Chicago, Indianapolis & Louisville Railroads, all of which serve origins in the Brazil and Linton groups, or the railroads serving any other coal origin point in Indiana.

The record in this case simply does not contain evidence of facts the existence of which must be established before a finding of violation of Section 2 can be made, *i. e.*, (a) that coal was transported by the Milwaukee and by other carriers and the Milwaukee jointly, (b) that such coal was transported from and to the same origins and destinations over the same route, and (c) that it was transported under

substantially similar circumstances and conditions. There is, therefore, no factual basis to support the conclusion of the Commission that such violation exists, or the order of the Commission to cure such alleged violation of Section 2 of the Act.

The statement in Finding No. 8 (R. 207) that "The transportation conditions under which coal moves from Indiana and Illinois groups to these northern Illinois destinations are sufficiently similar to require the use of the same rate basis from all of such groups," is not applicable to the differences in transportation conditions and circumstances under which coal moves from the carriers serving Indiana origins. We have demonstrated that as regards the carriers serving the Indiana groups, that statement is not supported by any evidence. Likewise, the statement appearing in the body of the report, page 195 (R. 183): "The transportation conditions over the single-line routes of the Milwaukee and the Illinois Central do not differ materially from those over the joint-line routes to the same destinations from other mines in the same group. * * *" is not supported by evidence, and cannot support the order of the Commission. The record is devoid of any evidence whatsoever of transportation conditions over the Illinois Central from origins served by it in Indiana.

Further, the findings and conclusions of the Commission are so vague and uncertain as to render the order incapable of application and, therefore, void.

Finding No. 5 (R. 207) states that "the Milwaukee and the Illinois Central join in rates from the Princeton and Boonville groups to these northern Illinois destinations which reflect differences * * * greater than the so-called standard differentials and greater than are warranted by the respective differences in distances." Conclusion No. 1 (R. 210) states the "present and proposed rates from Indiana to the northern Illinois destinations * * * result or

would result in unjust discrimination as between shippers and receivers of coal transported in whole or in part by the Milwaukee or the Illinois Central Railroads, in violation of Section 2 of the act." The order is to cease and desist from practicing the unjust discrimination under Section 2 of the Act found in the report to exist and to publish rates which will avoid and remove said unjust discrimination. (R. 222.)

The conclusion embraces all of Indiana, including the Princeton and Boonville groups, no origins in which are served by either the Milwaukee or the Illinois Central. From the Conclusion No. 1 and the order it is not clear as to what rates are deemed to be unjustly discriminatory; the conclusion embraces all rates on coal from Indiana to all destinations where such coal is transported, in whole or in part, by the Milwaukee or the Illinois Central. It includes rates from every origin in every group in Indiana in which the Milwaukee or the Illinois Central participates. The only way by which those two railroads could comply with the order would be to cease transporting coal via their single-line routes and also cease participating with other carriers in the transportation of coal from Indiana to those Illinois destinations. The findings and conclusion of the Commission are so vague and uncertain that they do not support the order.

The principle announced in the case of *Eastern-Central Assn.* v. *United States*, 321 U. S. 194, at pages 200-203, is applicable here. There it was held that where the Commission has for years decided cases of discrimination by "reference to and consideration of all pertinent facts, circumstances and conditions affecting the rates in effect at any particular time" it cannot depart from that policy and base a decision on one factor only—cost of service—without stating each of the other factors, why they are not considered, and the reasons why the new policy conforms to the Act. So here, where the Commission seeks to abandon the

long adhered to rule that there can be no discrimination where the shipments originate at different origins, or move over different routes, the Commission should state its reasons for so doing and show that this present ruling conforms to the Act.

We submit that the order of the Commission is not supported by findings of fact or by evidence, is uncertain, and is void and should be enjoined and set aside so far as it pertains to unjust discrimination in violation of Section 2 of the Act.

We further submit that in so far as unjust discrimination in violation of Section 2 of the Act is concerned the District Court erred in concluding as a matter of law that: "The Commission's report and order dated July 9, 1945, were made within its statutory authority and are supported by adequate findings of fact," that "The findings of the Commission as set forth in the report and order of July 9, 1945, have substantial support in the record made before the Commission and afford a rational basis for its conclusions," and that "The Commission's report and order are lawful and valid in all respects." (R. 111.)

III.

The Conclusion That the Present and Proposed Rates from Indiana to Destinations in Northern Illinois Result or Would Result in Undue Preference and Prejudice as Between Origins in the Brazil and Linton Groups and as Between the Respective Indiana Groups in Violation of Section 3 (1) of the Act, and the Order to Cease and Desist from Such Violation and Maintain Rates Which Will Avoid and Remove Such Violation, Are Not Supported by Findings of Fact or by Evidence.

The only findings of fact made by the Commission pertinent to the question of undue preference and prejudice are those summarized *supra* at pages 33-34.

Conclusion No. 1 of the Commission (R. 210) states: "The present and the proposed rates from Indiana to the northern Illinois destinations * * * result or would result in * * * undue preference and prejudice as between the origins in the Brazil and Linton districts, and as between the respective Indiana districts, in violation of section 3 (1) of the act, in and to the extent that such rates reflect or would reflect rate relations between such districts and between points in each of those districts to the respective destinations which differ from the relations reflected by the rates and the rate bases set forth as approved in this report, including Appendixes A and D hereto."

The order requires the carriers according as they participate in the transportation "(1) to cease and desist from practicing * * * the undue prejudice and preference under section 3 (1) of said act, found in said report to exist, and (2) to publish, maintain, and apply rates and charges which will avoid and remove said * * * undue prejudice and preference." (R. 222.)

Section 3 (1) of the Act (49 U. S. C. 3 (1)) (*infra*, pp. 96-97) provides as follows:

> "It shall be unlawful for any common carrier * * * to make, give, or cause any undue and unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, * * * region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, * * * region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; PROVIDED, HOWEVER, That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description."

There are two situations to which the order applies, (1)

as between origins in the Brazil and Linton groups, and (2) as between the respective Indiana groups. We will discuss the matter in that sequence.

The evidence shows that from origins served by it in the Brazil and Linton groups the Milwaukee charges via its single-line route a lower rate to Rockford and other destinations in northern Illinois than is charged by carriers serving other origins in those groups. The evidence further shows that the Milwaukee participates in some of the tariff routes from origins on such other carriers over which the higher rates apply. The same situation was shown with respect to the Illinois Central from origins served by it in the Linton group. The only other evidence was of the distances via shortest tariff routes from the origins, and the fact that while the Pennsylvania Railroad published rates via short tariff routes in which the Milwaukee participated, no coal ever moved via such routes, and that any coal from origins on the Pennsylvania consigned to northern Illinois destinations was hauled to Chicago and there turned over to connections for the transportation to destination, which routes are 60 to 80 miles longer than the short tariff routes. (R. 791-792.)

There is evidence of the total shipments of coal from the Indiana groups to but seven of the destinations in northern Illinois involved in this case for the years 1936 and 1941 and the first six months of 1942 (Ex. No. 4, Sec. VIII; Ex. No. 99), but there is no evidence of the routes or carriers over which or the specific origins from which such shipments moved. Exhibit No. 4, Sections VIII and IX, and Exhibits Nos. 5, 10, 99, 100 and 101 (R. 1677, 1678, 1679, 1697), which deal with production and shipments of coal from the various groups, will be examined in vain without discovering any showing of shipments from any specific origin in any group in Indiana or Illinois to any destination in the territory involved in this case, or the destination ter-

ritory taken as a whole. There simply is no evidence in this record of shipments or movements of coal from Indiana to support any finding or inference that there exists any preference or prejudice between (a) origins in the Brazil and Linton districts, or (b) the respective Indiana districts.

There is no evidence that any mine served by a carrier other than the Milwaukee would ship any more or less coal than it has previously shipped to destinations in northern Illinois on the Milwaukee, (1) if the rates of the Milwaukee were increased to the level of the rates applicable from such other mines, or (2) if the Milwaukee cancelled its rates. There is no evidence that any mine in the Brazil or Linton groups ever lost any business to a mine served by the Milwaukee. There is no evidence that any mine in either of said groups was prevented from securing an order for coal at any of these Illinois destinations by reason of the rates in effect from mines served by the Milwaukee. There is a complete lack of evidence that any person, company, firm, corporation, association or locality in either the Brazil or Linton groups were given or received any advantage or preference or were subjected to any disadvantage or prejudice by reason of the single-line rates of the Milwaukee from origins served by it to any destination. The foregoing is equally true with regard to the origins served by the Illinois Central in the Linton group. The appellants here include operators whose mines are served by the Milwaukee and all the other carriers serving mines in Indiana.

The rates from the origins on the Milwaukee are on the basis of the standard differentials with the rates from the mine groups in Illinois. (R. 1062.) The standard differential is that the Brazil group rates are 30 cents per ton less than the rates from the Southern Illinois group and on a parity with the rates from the Springfield group in Illinois. (R. 1066-1070.) These standard differentials apply to all destinations in Wisconsin, except along the Lake, eastern

Iowa and southeastern Minnesota, and prior to the reduction of intrastate coal rates to northern Illinois destinations, to all of northern Illinois. (R. 1070.) The one witness who is engaged in the coal business who testified in this case stated that he thought it would be preferable to have all the rates from the Brazil and Linton groups on one level, and that should be the level of the Milwaukee rates, which are properly related to the rates from the Illinois groups. (R. 1466.) The Commission in I. C. C. Docket No. 25595, reported 204 I. C. C. 225, found that standard differential relationship between the Indiana and the Southern Illinois groups "fair and reasonable to all concerned," as it applied to Wisconsin, Minnesota and Iowa. The differences in distance to the destinations in Wisconsin, Minnesota and Iowa are not as much in favor of Indiana as to destinations in northern Illinois. (Ex. No. 49; R. 1074, 1689.)

The Commission, in holding that the single-line rates of the Milwaukee and Illinois Central prefer shippers on those lines and prejudice shippers on other lines serving mines in the Brazil and Linton groups, wholly ignores the fact that the Illinois mines enjoy rates to Rockford and other destinations which are much more favorable to them as compared to Indiana shippers than are the rates generally to the surrounding territory. The Commission also ignored the significance of Exhibit No. 4, Part VIII (R. 1677) and Exhibit No. 99 (R. 1697), which show that, exclusive of Rockford, to the seven destinations for which there is a record of coal shipments, Indiana shipped but 57,146 tons, while Illinois shipped 292,771 tons of coal in 1941; whereas, to Rockford, where Indiana operators served by the Milwaukee and the Illinois Central had rates on the standard relationship with Illinois, Indiana shipped 211,561 tons of coal in 1941 and Illinois 276,101 tons. In 1936, the first full year after the Milwaukee rates were restored to their standard relationship with Illinois rates, after being out of

the market for four years, 1930 to 1934, Indiana shipped only 51,347 tons to Rockford, as compared with 208,029 tons from Illinois.

While this Court does not undertake to draw inferences from evidence before the Commission, leaving that function to the Commission, we submit that there is no basis for any inference or assumption that shippers from the Brazil and Linton groups via multiple-line routes are prejudiced by the single-line rates of the Milwaukee and Illinois Central, or that shippers on those two lines are preferred over shippers via the multiple-line routes. The evidence negatives such an inference or assumption by showing clearly that the competition from the Illinois mines is the factor that prevents Indiana shippers, not having rates on the standard relationship to Illinois rates, from shipping more coal to these destinations.

The Commission recognized the absence of any evidence of prejudice and preference in the record, by the statement on page 195 of its report (R. 183, 184), that "an extensive showing of injury through the loss of tonnage to particular coal shippers or consumers by reason of the discriminatory rates here before us is not required. *United States* v. *Chicago Heights Trucking Co.*, 310 U. S. 344. The situation presented is in principle similar to that before us in *Fairbanks-Morse & Co.* v. *Alton & S. R.*, *supra*, pages 201-206, wherein we found that the maintenance of higher rates from six mines in the Southern Illinois district to Janesville and Clinton Junction, Wisconsin, was unduly prejudicial and preferential to the extent they exceeded the contemporaneous rates to the same destinations from other mines in the same district."

The situations presented in the two cases cited in the report are so very different from that here involved that those cases are no justification for the Commission making a finding or concluding, in the absence of any evidence of

injury, that any Indiana rates are unduly prejudicial and preferential. In the case of *United States* v. *Chicago Heights Trucking Co.*, 310 U. S. 344, the issue was whether the transportation by truck of like goods, over the same route, the same distances, frequently in the same trucks, at a lower rate for one shipper than for another, constituted a violation of Section 216 (d) of the Act. The sole question was whether charging a freight fowarder less than a commercial shipper violated the Act, and this Court sustained the Commission's conclusion that the lesser charge for identical service collected from the fowarder than from the commercial shipper was a violation. The difference in rates was based solely upon a difference in identity of shippers, a circumstance wholly irrelevant to the carrier service rendered.

In *Fairbanks-Morse & Co.* v. *Alton & S. R. Co.*, 251 I. C. C. 181, pages 201-206, there was evidence of threatened loss of business which was only retained by the mine operators, complainants, reducing their prices by the amount of the reduction from the six favored origins; the same carriers served the origins having the lower rates and those having the higher rates; the distances from the origins having the lower rates were greater than those having the higher rates. The evidence is recited in detail in the Commission's report of that case, and it is full and complete. That case is far from deciding that the maintenance of lower rates from an origin by a railroad having a single-line haul is unlawful because other railroads serving other points maintain higher rates from such other origins to the same destination. It does not sustain a holding that evidence of injury to one and benefit to another is not essential to sustain an order to cease a violation of Section 3 (1) of the Act.

The second phase of the undue prejudice and preference covered by the order is as between the respective Indiana

groups. The only finding of the Commission on that subject is Finding No. 5 (R. 207) to the effect that "the Milwaukee and Illinois Central join in rates from the Princeton and Boonville groups to these northern Illinois destinations which reflect differences between those groups on the one hand, and the Brazil and Linton points served by those two respondents on the other, that are substantially greater than the so-called standard differentials and greater than are warranted by the respective differences in distance."

Again there is absolutely no evidence of injury to any shipper in the Princeton or Boonville groups. The one witness connected with an operating Indiana coal company who testified in this proceeding was the manager of companies operating a large mine in each the Princeton group and the Boonville group, as well as a large mine in the Northern Illinois group, respecting which latter most of his testimony was directed. This witness testified regarding the markets for Indiana coal, the relation of Boonville rates and distances to Southern Illinois, that an increase in the rates from the Sunlight (Boonville) and Tecumseh (Princeton) mines of his companies would decrease shipments from those mines to northern Illinois. (R. 1461, 1462.) He further testified that where one railroad has lower rates from the same group to a common destination than other railroads serving such group, the movement is over the lines having the lower rates; that the Milwaukee rates are lower than the rates over other carriers serving the Brazil and Linton groups; that this situation is a maladjustment; that the rates of the Milwaukee are on the proper relative basis compared with the Illinois groups; and that the Indiana rates from other districts should be adjusted to the rates of the Milwaukee from the Brazil group. (R. 1465, 1466.)

The witness did not testify that the single-line rates of the Milwaukee or the Illinois Central prejudiced the mines

he managed in the Princeton or Boonville groups, or that he could sell and ship more coal to northern Illinois if the rates of the Milwaukee and Illinois Central were cancelled or if they were increased. It is obvious from the witness' statement that the relationship to the Illinois rates is the prime factor controlling his ability to ship coal to these northern Illinois destinations.

The finding that the difference between the Milwaukee rates from Brazil and Linton origins and the rates from Boonville and Princeton are greater than the difference in distance warrants is contrary to the facts, and contrary to the Commission's conclusions as shown by the rates approved by it. This is shown by the following:

To Rockford, the rates and average distance from Milwaukee origins in the Brazil group are $1.80 and 237 miles; from Princeton the rate is $2.09 and the distance 375 miles and from Boonville the rate is $2.12, distance 409 miles—differences in distance of 138 and 172 miles and differences in rates of 29 and 32 cents per ton, respectively. (Ex. No. 28; R. 1686.) The rates approved by the Commission reflect a difference of 30 cents per ton Springfield under Southern Illinois for differences in distance ranging from 106 miles at Rockford to 149 miles at Belvidere, and averaging 129 miles to the twelve representative destinations. (R. 213, 216, 220.) The difference of 29 cents for 138 miles is more favorable to Princeton as compared with the Milwaukee, than the Southern Illinois relation to Springfield of 30 cents for an average longer haul of 129 miles. The average difference in distance between the Fulton-Peoria group and the Belleville group to the twelve representative destinations is 168 miles, the difference in the average approved rates is 46 cents per ton. (R. 220.) If 46 cents measures a fair relation where the difference in distance is 168 miles, it cannot be said that 32 cents is too great a difference in rates for a difference in distance of 172 miles, as between Mil-

waukee origins in the Brazil and Linton groups on the one hand and the Boonville and Princeton groups on the other hand.

The Commission and this Court have consistently held that a mere disparity in rates is not a violation of Section 3 (1); that the rates assailed must be a source of advantage to the one and a detriment to the other person or locality; that but for such rates traffic would not have moved from the favored person or locality or would have moved from the other; and that to be prohibited by Section 3 (1) the preference or prejudice must be "undue or unreasonable."

In *Chicago Live Stock Exchange* v. *Abilene & Southern Ry. Co.*, 223 I. C. C. 141, the Commission said, at page 152:

> "It is well settled that a *mere disparity in rates does not establish undue prejudice.* Preference and prejudice are not prohibited unless they are undue, and *to be undue they must be a source of advantage to the party or locality alleged to be favored and a detriment to the other party or locality.*" (Emphasis supplied.)

In *Michigan Fertilizer Co.* v. *Louisville & N. R. Co.*, 214 I. C. C. 585, 587, it is said:

> "Preference and prejudice are not prohibited unless they are *undue.* To be undue they must be a source of advantage to the party or locality alleged to be favored and a detriment to the other party or locality. The question, *whether they are undue, is one of fact, to be determined by us after consideration,* not only *of relative distances and transportation conditions,* but of *all matters which carriers,* apart from any question arising under the statute, *would treat as cause for a preference or advantage.*" (Emphasis supplied.)

Further, in the very recent decision in *A. E. Staley Mfg.*

Co. v. *Baltimore & Ohio R. Co.*, 262 I. C. C. 352, 356, the Commission said:

> "The *existing difference between the rates* assailed and the lower rates which prevail on the Midland and other lines *does not, for that reason, subject complainant to undue prejudice.* * * * The Complaint will be dismissed." (Emphasis supplied.)

In the case of *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457, it is said at page 481:

> "It is not any and every discrimination, preference, and prejudice that are denounced by the Commerce Act. Section 3 * * * renders unlawful any '*undue* or *unreasonable*' preference or advantage, prejudice or disadvantage. * * * And in the first paragraph of amended Section 15 * * * it is rates, regulations, or practices that in the opinion of the Commission are '*unjustly* discriminatory or *unduly* preferential or prejudicial,' etc., to which the prohibition is to be applied."

In *United States* v. *Illinois Central R. Co.*, 263 U. S. 515, at page 521, it is stated:

> "But mere discrimination does not render a rate illegal under § 3. Only such rates as involve unjust discrimination are obnoxious to that section."

We contend also that an order to remove an undue preference and prejudice must accord to the carriers affected an alternative of either reducing the higher rate or increasing the lower, or a combination of the two. To do this, the carrier or carriers involved must control both rates. A carrier cannot be found to be guilty of an undue preference or prejudice if it does not effectively participate in both of the rates involved.

In *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627, the rule of law and proposition here urged were discussed fully. The Court there said, beginning at page 646:

> "By its second order the Commission excluded the

Texas & Pacific and the L. R. & N. from its findings of undue preference and prejudice and exempted them from the requirement as to differentials. * * * Exemption was * * * granted * * * pursuant to a rule which the Commission had consistently followed since its organization: namely, that *a carrier may not be held responsible for undue prejudice or preference* unless both of the localities affected are upon its lines, *or it effectively participates in the rates to both* * * *. Though the Texas port lines can reduce their rates to and from those ports without the concurrence of the New Orleans lines, no reductions can be made in those rates by the New Orleans lines, even from or to their local stations, without the concurrence of one or more lines reaching the Texas ports. Clearly the New Orleans carriers *have no effective control over the rates* between their junction points and the Texas ports.

"Where * * * a carrier whose lines reach, or which controls the rate to, one of the destinations, is a party to a joint rate to the other but *cannot make or control* the latter *rate, or though it were to withdraw as a party thereto, or to cancel the rate, the discrimination would still continue—it cannot be held responsible, nor can any order to remove the prejudice run against it.* * * * The reason for the doctrine is that *preference or prejudice can be found only by a comparison of two rates.* * * * Assuming that neither rate is unreasonable, the *one carrier cannot be compelled to alter its rate, because the other's is higher* or lower for the same service. *A carrier or group of carriers* must be the common source of the discrimination—*must effectively participate in both rates, if an order for correction of the disparity is to run against it or them.* Where an order is made under § 3 an alternative must be afforded. The offender or offenders may abate the discrimination by raising one rate, lowering the other, or altering both. * * * The situation must be such that the carrier or carriers if given an option have an actual alternative. * * *

"What Congress sought to prevent by that section (3), as originally enacted, was not differences between localities in transportation rates, * * * but unjust discrimination between them by the same carrier or carriers." (Emphasis supplied.)

The Commission has consistently adhered to the doctrine that to sustain a complaint under Section 3 (1) the carrier or carriers allegedly responsible for unduly preferring one shipper at the expense of another must participate in both shipments and must effectively control the rates under which such shipments are made. *Anchor Storage Co.* v. *Alton R. Co.*, 211 I. C. C. 307, 309; *Dunn Woolen Co.* v. *Baltimore & O. R. Co.*, 220 I. C. C. 223, 226; *Jones & Kavanagh Co.* v. *Southern Pacific Co.*, 219 I. C. C. 105, 107.

There is no finding, and there is no evidence in the record before the Commission, that the Milwaukee or the Illinois Central effectively participates in or controls any of the rates from the Indiana groups to destinations in northern Illinois, other than the single-line rates which they themselves publish. For example, there is no evidence that the Milwaukee could reduce the rates from mines served by the C. & E. I. or any other carrier serving mines in the Brazil and Linton groups. There is no evidence that the C. & E. I., the Pennsylvania, or any other road serving mines in either of said groups ever requested the Milwaukee or the Illinois Central to join in rates to any destination, to which the Milwaukee or the Illinois Central publishes single-line rates, on the same level as said single-line rates.

In *Central Railroad Co. of New Jersey* v. *United States*, 257 U. S. 247, there was involved the creosoting-in-transit privilege which was alleged to violate Section 3 (1) of the Act. The undue preference and prejudice found to exist was that the Central Railroad of New Jersey and the

Pennsylvania, which served a creosoting plant at Newark, New Jersey, failed to establish the creosoting-in-transit privilege at that point, while joining in joint through rates from Illinois, Indiana, Ohio and Pennsylvania, where creosoting-in-transit was permitted by carriers other than the Central Railroad and the Pennsylvania.

In reversing a decree of the District Court which had refused to enjoin the order of the commission, this Court stated that the Central Railroad and the Pennsylvania did not provide any such basis at any point on their lines and that no competitor of the complainant has a plant on the lines of either of said carriers, that under the rules of the Commission privileges like creosoting-in-transit are treated as a matter of policy on the part of the carrier on which the plant is situated, and whether the privilege shall be granted is determined by the local carrier.

The opinion then continues, at page 257:

> "The Commission might, therefore, acting under § 1, have directed the Central and the Pennsylvania to establish the creosoting-in-transit practice at Newark, if it deemed failure to do so unreasonable or unjust; or it might, in an appropriate proceeding, have directed the southern and midwestern carriers to discontinue the practice on their lines, if it deemed the granting of the privilege to be unreasonable or unjust. But it did neither. Instead it sought to accomplish by indirection either one result or the other and ordered under § 3 that the discrimination found to exist be removed. Twenty-one of the appellants are powerless either to cause the Central and the Pennsylvania to instal the privilege at Newark or to cause the southern and midwestern carriers to discontinue the practice on their lines. The Central and the Pennsylvania are likewise powerless to cause these connecting carriers to withdraw the privilege.
>
> * * * * *

"It is insisted that the order leaves appellants the alternative of withdrawing from the tariffs which establish joint rates with the southern and midwestern carriers through Newark. The order does not so provide in terms; and in fact the alleged alternative is illusory. The undue prejudice found arises not from the existence of joint rates, but from conditions local to other railroads. Cancellation of the joint rates would not change those conditions. Although the joint rates were withdrawn, the established through routes would remain.

• • • • •

"It is urged that, while the undue prejudice found results directly from the individual acts of southern and midwestern carriers in granting the privilege locally, the appellants, as their partners, make the prejudice possible by becoming the instruments through which it is applied. Discrimination may, of course, be practiced by a combination of connecting carriers as well as by an individual railroad; and the Commission has ample power under § 3 to remove discrimination so practiced. See *St. Louis Southwestern Ry. Co.* v. *United States*, 245 U. S. 136, 144. *But participation merely in joint rates does not make connecting carriers partners. They can be held jointly and severally responsible for unjust discrimination only if each carrier has participated in some way in that which causes the unjust discrimination;* as where a lower joint rate is given to one locality than to another similarly situated. *Penn Refining Co.* v. *Western New York & Pennsylvania R. R. Co.*, 208 U. S. 208, 221, 222, 225. Compare *East Tennessee, Virginia & Georgia Ry. Co.* v. *Interstate Commerce Commission*, 181 U. S. 1, 18. If this were not so, *the legality or illegality of a carrier's practice* would depend, *not on its own act, but on the acts of its connecting carriers.*" (Emphasis supplied.)

Applying the principles stated in the foregoing case, the order of the Commission in this case would require the Milwaukee to give up its legal right to initiate rates on

which it can transport coal to this destination territory in competition with coal originating in Illinois, and would force the Milwaukee to join in a policy adopted by other carriers serving the Brazil and Linton groups of not participating in traffic to Rockford and other destinations in northern Illinois and to Beloit. The order of the Commission would deprive the Milwaukee and the Illinois Central of that right which this Court has often reiterated, *i. e.*, the right to initiate and maintain rates that are lawful within the zone of reasonable minimum and reasonable maximum rates.

As stated in the case of *United States* v. *Chicago, Milwaukee, St. Paul & P. R. Co.*, 294 U. S. 499, at page 506:

> "There is no suggestion in the report that the rates have been so reduced as to be less than compensatory. True they do not reach the maxima beyond which charges are excessive. On the other hand, they do not pass the minima beyond which charges are too low. *A zone of reasonableness exists between maxima and minima within which a carrier is ordinarily free to adjust its charges for itself.* We lay to one side cases of discrimination or preference or rivalry so keen as to be a menace to the steady and efficient service called for by the statute. Those tendencies excluded, 'a carrier is entitled to initiate rates and, in this connection, to adopt such policy of rate making as to it seems best.' *United States* v. *Illinois Central R. Co., supra.*" (Emphasis supplied.)

The Commission, in the case of *Illinois Coal Traffic Bureau* v. *Ahnapee & W. Ry. Co.*, 204 I. C. C. 225, discussing an allegation that the rates from Indiana and the rates from certain origin groups in Illinois to points in Wisconsin, Iowa and Minnesota subjected southern Illinois shippers to undue prejudice and accorded to Indiana shippers an undue preference, said at page 241:

> "Our conclusion herein is further strengthened by the indefiniteness of the record upon the fact of in-

jury to complainant's members by reason of the rate adjustment complained of. *No one testified that southern Illinois lost any business to Indiana by reason of the rate adjustment as a controlling factor.* There is evidence that tonnage was lost from southern Illinois to Indiana and *vice versa*, but in no instance does it appear definitely that with a more favorable rate adjustment southern Illinois could have retained any business which it lost to Indiana. Undue prejudice ordinarily cannot exist unless it be clearly established that the rates complained of constitute a source of undue disadvantage to one and of undue advantage to another, *Barrett Co.* v. *Atchison, T. & S. F. Ry. Co.*, 172 I. C. C. 319, 334; in other words, unless it is made to appear that the resulting injury would cease upon removal of the alleged prejudice in rates. *Sewerage Comm. of Milwaukee* v. *Aberdeen & R. R. Co.*, 190 I. C. C. 601. So far as this record shows, the losses about which southern Illinois is here complaining cannot be ascribed in any material degree to the relation of its rates with those from Indiana." (Emphasis supplied).

The principle enunciated in the case of *Eastern-Central Assn.* v. *United States*, 321 U. S. 194, at pages 200-203, above referred to, is equally as applicable to the question of prejudice and preference as to unjust discrimination. The Commission cannot depart from established criteria without showing sound reasons for so doing.

We submit that part of the order to cease from practicing the undue prejudice and preference found in the report to exist is not supported by findings of fact or by evidence, and that the District Court erred in failing to set aside and enjoin that portion of the order. The conclusions of the District Court as applied to this phase of the order are unjustified and erroneous.

IV.

The Commission Had No Authority to Order an Increase in or Change in the Relationship of the Present Rates from Indiana in the Proceeding I. & S. Docket No. 5139.

The order of July 9, 1945, requires the respondent carriers to cancel the new rates which were published in 1942 and suspended by the Commission by its order of July 30, 1942. The order proceeds further to require the carriers "according as they participate in the transportation * * * (1) to cease and desist from practicing the unjust discrimination * * * and the undue prejudice and preference * * * found in said report to exist, and (2) to publish, maintain and apply rates * * * which will avoid and remove the said unjust discrimination and undue prejudice and preference." (R. 222.) The latter part of the order can and does apply only to the present rates from Indiana origins, *i. e.*, the rates in effect at the time of the entry of the order, a subject matter that was not before the Commission in the I. & S. Docket No. 5139 proceeding.

The jurisdiction of the Commission over and its authority to suspend rates are contained in and may be exercised only under the provisions of Section 15 (7) of the Interstate Commerce Act (*infra*, p. 99). That Section reads in part as follows:

> "Whenever there shall be filed with the commission any schedule stating a new individual or joint rate * * * the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint * * * to enter upon a hearing concerning the lawfulness of *such* rate * * * and after full hearing * * * the commission may make such order with reference *thereto* as would be proper in a proceeding initiated after it had become effective. * * *" (Emphasis supplied.)

The Commission, acting within the scope of the power granted to it by this Section, upon complaint filed by the Coal Trade Association of Indiana, entered its order of July 30, 1942 (R. 141-144), reciting that there had been filed with the Commission tariffs containing schedules stating new individual and joint rates, to become effective August 2, 1942, and later, and listing a number of supplements to tariffs of various railroads. The order then proceeded:

> "IT IS ORDERED, That the Commission upon complaint, without formal pleading, enter upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in the said schedules contained in said tariffs,
>
> * * * * *
>
> "And the rates, charges, regulations and practices stated in all schedules contained in each of the other said tariffs and supplements named in this order.
>
> * * * * * *
>
> "IT IS FURTHER ORDERED, That the operation of the said schedules contained in said tariffs be suspended, and that the use of the rates, charges, regulations and practices therein stated be deferred upon interstate traffic until the 2nd day of March, 1943 * * *."

The order of the Commission of July 30, 1942, clearly deals only with the new rates contained in the schedules enumerated in the order, the effectiveness of which was suspended. The proceeding instituted by the order, the investigation and the hearing entered into concerned only the lawfulness of the new rates.

The complaint, or protest and request for suspension (R. 131-140) filed with the Commission, and referred to in the order of investigation and hearing, contains no allegation or suggestion of unlawfulness in any respect of any of the rates from Indiana mines then in effect. That complaint was directed solely to certain rates and

rate relationships proposed to be put into effect in the new schedules published by the carriers which the protestant considered violative of Sections 1, 2 and 3 of the Act.

In his statement at the outset of the hearing ordered by the Commission, the Examiner did not state that the hearing would be concerned with any feature of the present rates from Indiana or any other district. (R. 228-231.) No party to the proceeding before the Commission, through pleading filed, argument made, or evidence introduced in the hearings before the Examiner, in brief, in exceptions to the proposed report of the Examiner or in argument before the Commission, suggested or contended that the present rates were in issue or that the present rates from Indiana, in relation to each other, were in any respect unlawful.

The Commission did not enter upon an investigation or order any hearing with respect to the present rates. It did not set for hearing any issue of lawfulness of the present rates. No interested or affected party had any notice of a hearing, nor did any such party introduce any evidence with respect to the lawfulness or unlawfulness of the present rates. The jurisdiction and authority of the Commission to act on the present rates never having been invoked, and there having been no hearing regarding the lawfulness of the present rates, the Commission had no power to enter an order with respect thereto.

Section 15 (1) of the Act provides (*infra*, p. 98):

> "*Whenever*, after full hearing, upon a complaint made as provided in section 13 of this chapter, or *after full hearing under an order for investigation and hearing* made by the commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, *the commission shall be of opinion that any* * * * *rate* * * * *is or will be* unjust or unreasonable or unjustly discriminatory or

unduly preferential or prejudicial, or otherwise *in violation of any of the provisions of this chapter, the commission is authorized and empowered* to determine and prescribe what will be the just and reasonable * * * rate * * * to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and * * * *to make an order that the carrier or carriers shall cease and desist from such violation* to the extent to which the commission finds that the same does or will exist * * *." (Emphasis supplied.)

This Section of the Act authorizes the Commission to enter an order that a "carrier or carriers shall cease and desist from such violation" only after a "*full hearing* under an order for investigation and hearing." Clearly, there must be a hearing with respect to the subject matter covered by such order.

In the case of *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States*, 284 U. S. 248, at page 262, the Court said:

"* * *the Commission, exercising a delegated regulatory authority which does not have the freedom of ownership, operates in a field limited by constitutional rights and legislative requirements. Its duty under §§ 1 (5), 3 (1) and 15 (1) of the Interstate Commerce Act with respect to the prescribing of reasonable rates and the preventing of unreasonable or unjustly discriminatory or unduly preferential practices, has not been changed * * *. The legal standards governing the action of the Commission in determining the reasonableness of rates are unaltered. In the discharge of its duty, a fair hearing is a fundamental requirement. *I. C. C.* v. *L. & N. R. R. Co.*, 227 U. S. 88, 91. In the instant proceeding the hearing accorded related to conditions which had been radically changed, and a hearing, suitably requested, which would have permitted the presentation of evidence relating to existing conditions, was denied. We think that this action

was not within the permitted range of the Commission's discretion, but was a denial of right. * * *"

So in the instant case, the entry of an order which acts directly and solely upon the present rates, without a "hearing under an order for investigation and hearing" regarding the lawfulness of those rates, violates a fundamental requirement of the Act. No "order for investigation or hearing" as to the lawfulness of any present rate or rates from Indiana mines was ever entered by the Commission. It is only after a full hearing *upon an order for investigation and hearing respecting specifically the existing rates* that there is any authority in the Commission under Section 15 (1) to enter an order requiring the carriers to desist from charging the existing rates. The full hearing required by the Act must necessarily be with respect to the subject matter of the order. The Commission order of July 30, 1942, instituting the proceeding in which the order here under review was made, will be examined in vain for any suggestion of an investigation and hearing regarding the question of discrimination, under Section 2, or undue prejudice and preference, under Section 3 (1), in respect to the present rates from the Indiana groups to destinations in northern Illinois.

In the case of *Morgan* v. *United States,* 304 U. S. 1, at page 18, the Court said:

> "The right to a hearing embraces not only the right to present evidence but also a *reasonable opportunity to know the claims of the opposing party* and to meet them. * * * Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are *entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command.*" (Emphasis supplied.)

If the Commission intended to deal with the present

rates in I. & S. Docket No. 5139, the parties were entitled to know that those rates were to be considered and to be in a position in the hearing to present evidence with respect to those present rates to show whether or not they were lawful. No such opportunity was given. The jurisdiction of the Commission, its power and authority under the Act to correct any alleged unlawfulness in the present rates, was never invoked.

The fact that the Commission might, under the provisions of Section 15 (1) of the Act, order an investigation of the present rates, is no answer to the contention of the appellants herein that in the instant case the Commission did not do so, and did not have the present rates before it for consideration.

No party questioned the right of the Milwaukee to maintain single-line rates less than joint-line rates of other carriers serving origins in Brazil and Linton to destinations in northern Illinois. No party conceived that question was involved in the proceeding. That question had been raised years ago and decided by this Court. *United States* v. *Chicago, Milwaukee, St. Paul & Pacific R. Co.*, 294 U. S. 499. If the Commission had intended to consider again that question in this proceeding it owed a duty to notify the parties of that intention in clear language. The order of July 30, 1942, reciting the filing of schedules of new rates, and ordering that the Commission "enter upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in said schedules contained in said tariffs" confines the hearing to the lawfulness of the new rates. The tariff supplements containing the new rates do not contain any of the present rates to destinations in Illinois. These supplements were introduced in evidence in the District Court. (R. 1614-1661.)

We do not argue that in a proper case the Commission could not require changes in the present rates. We do not

argue that in the I. & S. Docket No. 5139 proceeding it was beyond the power and authority of the Commission, if the evidence and findings were adequate to support such an order, to require the carriers to publish and maintain specific rates named by the Commission in lieu of the suspended rates, even though the prescribed specific rates differed from the present rates. The Commission did not require the publication of any specific rates; it required merely the cancellation of the suspended rates. It approved a vast number of rates as maximum, and required cancellation of the suspended rates without prejudice to the carriers publishing rates on the bases approved. We can only deal with the order entered by the Commission, and beyond the cancellation of the suspended rates, the only mandatory requirement of the order was with respect to the present rates.

We submit that the only question before the Commission under the order entering upon the investigation and hearing in I. & S. Docket No. 5139 was the lawfulness of the new rates, and that therefore the Commission had no authority to enter any order to change the present rates. It had exhausted its jurisdiction when it ordered the new rates cancelled—that part of the order completely disposed of the question of the lawfulness of the new rates.

The District Court was in error in concluding that the Commission's report and order were made within its statutory authority, that the plaintiffs (appellants) were afforded a full and fair hearing before the Commission, that the record made before the Commission discloses no error of law, that the report and order are lawful and valid in all respects and that the complaints should be dismissed.

V.

The Commission Had No Authority or Jurisdiction in I. & S. Docket No. 5139 to Approve Rates from the Boonville Group on a Parity With Rates from the Princeton Group, or to Enter Any Order Requiring the Present Rates to Be on a Parity.

The Commission in its report approved rates from each of the groups in Indiana to twelve destinations in Illinois. To each destination the approved rates from the Boonville group are the same as the approved rates from the Princeton group. (R. 213-216.)

The order under review requires the carriers serving mines in Indiana to remove the undue preference and prejudice found in the report to exist. Conclusion No. 1 of the Commission report (R. 210) states that undue prejudice and preference exists in the present rates "as between the respective Indiana districts, in violation of Section 3 (1) of the Act, in and to the extent that such rates reflect or would reflect rate relations between such districts * * * to the respective destinations which differ from the relations reflected by the rates and the rate bases set forth as approved in this report, including appendixes A and D hereto."

Finding No. 13 (R. 208), is to the effect that "the difference in the distances from the single important mine in the Boonville group and from nearby mines producing similar coal in the Princeton group to Beloit and the northern Illinois destinations is small"; that "a merger of the two groups will increase the average distance from the Princeton group to the 12 representative northern Illinois destinations * * * by only 8 miles"; that "the movement from the Boonville group to this destination territory has been and is negligible"; and that "accordingly, the rates from the Boonville mines to these destinations should not

exceed those from the Princeton district to the same destinations."

There are no other findings of fact regarding the relationship between the Boonville and Princeton groups.

The statement that the difference in distance from the one important mine in the Boonville group and from nearby mines producing similar coal in the Princeton group is small, is not supported by, and is contrary to, the evidence. The evidence is that the Sunlight mine is 10 miles across country from the Tecumseh mine in the Princeton group. (R. 1460.) Tecumseh is on the New York Central; Sunlight is on the Southern Railway. (R. 1460.) There are 8 origins in the Boonville group, and the average distance from that group to each of the twelve destinations is the same as or within 2 or 3 miles of the distance from Sunlight. The average distance from all mines in the Princeton group to Rockford is 375 miles and from the Boonville group it is 409 miles; from the Sunlight mine, 408 miles. (Ex. No. 28, page 3; R. 1686.) To all the twelve destinations, Exhibit No. 28 shows the average distance from the Boonville group to be 392 miles and from the Princeton group to be 358 miles—a difference of 34 miles.

From origins on the Southern in the Princeton group, the distances are 49 miles less than from the Boonville group to Rockford, Freeport, Dixon and Rochelle. (Ex. No. 41; R. 1688.) The Commission in this report approves rates from the Linton group 10 cents per ton over rates from the Brazil group where the average difference in distance between the two groups is 37 miles. (Appendix D to Report; R. 220.) On page 198 of the report the Commission recites the above facts regarding the Brazil and Linton group rates and distances, and states: "We find that the differential between the Brazil and Linton districts to these destinations, including Beloit, should be 10 cents." (R. 187.)

We submit that if a difference of 37 miles in the average distance between the Brazil and Linton groups warrants a differential of 10 cents per ton, then the average difference of 34 miles between Princeton and Boonville is not "small" and inconsequential. As shown by Exhibit No. 28, the distances from some mines in the Linton group are less than from mines in the Brazil group to the same destination—but the Commission approves a differential of 10 cents per ton between those mines, the same as all mines in the groups.

That the average distance from the Princeton group is increased only 8 miles by including the Boonville origins is due to the fact that there are 29 origins in Princeton and 8 origins in Boonville, and dividing the total miles from the 37 origins by 37 dilutes the longer Boonville distances by the greater number of shorter distances from Princeton.

There is no finding or contention that the present rates from Boonville are unreasonably high. The Commission approves rates from Boonville which are higher than the present rates. The Commission states that the rates from Boonville are lower than they should be because of the low differential over the Linton rates. (Report, page 201; R. 190.) Clearly the Commission does not deem the Boonville rates excessive.

There is no evidence that the relationship between the Princeton and Boonville rates unduly prefers Princeton or prejudices Boonville. There is no evidence of unjust discrimination against Boonville group mines because they are charged higher rates.

There are no findings of fact that the Boonville or Princeton group rates are unlawful in any respect. Such a finding is a condition precedent to the jurisdiction and authority of the Commission to enter any order affecting those rates. See *United States* v. *Chicago, Milwaukee, St. Paul*

& Pacific R. Co., 294 U. S. 499, at 504, where it is said:

> "This court has held that an order of the Interstate Commerce Commission is void unless supported by findings of the basic or quasi-jurisdictional facts conditioning its power."

For these reasons and the considerations set forth under Point IV of this argument, *supra*, pp. 62-68, the order of the Commission in I. & S. Docket No. 5139, so far as it purports to operate upon the rates from the Boonville and Princeton groups, is void and should be enjoined.

VI.

The Commission Had No Authority or Jurisdiction to Approve Specific Rates to Each of a Number of Widely Separated Destinations in Northern Illinois on the Basis of the Average of the Rates and Distances from Each Origin Group to All the Destinations, Where the Amounts of Such Rates and the Relationships in the Rates from the Various Origin Groups Vary at the Different Destinations.

In its report the Commission approves certain rates from each origin group in Indiana and Illinois to each of twelve destinations in northern Illinois. These rates are stated in Appendix A to the report. (R. 213-216.) In Appendix D to the report (R. 220), appears a statement of the average of the approved rates to all twelve destinations in northern Illinois. In the body of the report the Commission discusses the relationship in the rates from the various groups on the basis of such averages. (Report, pp. 198 and 200; R. 187-190.) At page 201 of the report (R. 191) the Commission compares, by percentages of two mileage scales, the average of the rates from all Indiana groups and from all Illinois groups to all the twelve representative destinations and states that the Commission believes

the approved rates and rate bases shown in Appendices A and D will afford fair and reasonable relations of rates to the northern Illinois destinations, both as between the respective origin groups and as between the Indiana groups on the one hand and the Illinois groups on the other.

The order cancelling the suspended rates is without prejudice to publishing rates on the bases approved. That part of the order requiring the removal of undue preference and prejudice also involves the relationships reflected by the approved rates.

Nowhere in the report are there any statements of facts or reasons why the Commission deems the approved rate from any group to any destination in northern Illinois proper. Nowhere in the report is there any statement of any fact or any reason why the Commission deems the relationship between the approved rates from an Indiana group and an Illinois group to any destination proper. The establishment of too high a rate to Rockford and too low a rate to Polo, while on the average such rates may be reasonable, does not comply with the requirements of the Act. Each origin group and each destination is entitled to just, reasonable, non-discriminatory, non-preferential and non-prejudicial rates.

The Commission states no fact or reason for approving rates of $2.07 for the 251 mile average distance from the Brazil group to Rockford, and $1.95 for the 257 mile haul from the Springfield group to Rockford. (R. 216.) No reason is stated why the Commission considers it fair to approve a rate of $2.07 from the Brazil group to Belvidere, a distance of 258 miles, and a rate of $1.95 from the Springfield group for a distance of 279 miles. (R. 213.) No reason is given for approving a rate from the Brazil group to Rochelle of $1.89 for a distance of 255 miles (R. 215), and a rate of $2.07 to Rockford for a distance of 251

miles. (R. 216.) It is significant that to Rochelle the distance from the Springfield group is but 200 miles, and the approved rate of $1.75 is still 14 cents per ton less than the approved rate of $1.89 from the Brazil group.

The averaging of wholly inconsistent, unexplained, and arbitrarily approved rates to these northern Illinois destinations into the final desired relationship that by comparison appears fair and reasonable, *i. e.*, $1.95 for 256 miles from Brazil and $1.83 for 225 miles from Springfield, does not support or tend to support the propriety of any of the approved rates to particular destinations.

The relationships between the groups under the approved rates are as inconsistent and arbitrary as the rates themselves. This is illustrated by a comparison of the rates approved from the Brazil and Southern Illinois groups. At Rochelle, where Brazil has a 100 mile shorter distance than Southern Illinois, Brazil has a 16 cent lower rate; at Sterling, where Brazil has only a 42 mile shorter distance than Southern Illinois, Brazil also would have a 16 cent lower rate. (R. 215.) At Belvidere, where Brazil's distance is 170 miles less than from Southern Illinois, the approved rates from Brazil are 18 cents less than from Southern Illinois (R. 213); while at Forreston, where distance favors Brazil only by 83 miles, the approved rate is 25 cents per ton less than the rate approved from Southern Illinois. (R. 214.) If the averages shown in Appendix D are just and reasonable, *i.e.*, Southern Illinois 354 miles, approved rates $2.14, Brazil distance 256 miles, approved rates $1.95, a difference in average distance of 98 miles and a difference in average rates of 19 cents, then clearly differences of but 16 cents for 100 miles, and 18 cents for 170, 122 and 125 miles, are improper.

The foregoing are but a few of the many instances of the inconsistencies and arbitrariness in the approved rates to the various destinations.

We submit that the report is so lacking in findings of fact, evidence, or reasons for approving the hodgepodge of rates and rate relationships set forth in Appendix A, that part of the report and the part of the order permitting the carriers to publish the approved rates, and requiring changes in present rates that do not reflect the relationships created under the approved rates, should be enjoined and set aside.

VII.

The Commission Has No Authority Under the Act to Require the Milwaukee or Any Other Carrier to Charge Higher Rates Than Such Carrier Believes to Be Proper from Origins Served by It in the Brazil and Linton Groups Because Other Carriers Serving Other Origins in Those Groups Maintain Higher Rates.

We have heretofore shown under Points II and III, *supra*, that there are no findings of fact and no evidence of the existence of any facts with respect to the single-line rates of the Milwaukee which constitute a violation of Sections 2 or 3 (1) of the Act. There are no findings and no evidence that the single-line rates of the Milwaukee are not compensatory or are less than reasonable minimum rates. There is no evidence and no finding of any illegality in those rates.

A railroad has the right to initiate such rates as it believes proper so long as those rates do not violate any of the provisions of the Act. The case of *United States* v. *Chicago, Milwaukee, St. Paul & Pacific R. Co.*, 294 U. S. 499, involved the legality of the single-line rates of the Milwaukee from origins on its line in the Brazil and Linton groups to Rockford and other points in northern Illinois. The Commission had entered an order requiring the cancellation of those rates, which order was enjoined

in the District Court. On appeal this Court said, at page 506:

> "There is no suggestion in the report that the rates have been so reduced as to be less than compensatory. True they do not reach the maxima beyond which charges are excessive. On the other hand, they do not pass the minima beyond which charges are too low. A zone of reasonableness exists between maxima and minima within which a carrier is ordinarily free to adjust its charges for itself. *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627, 636; *United States* v. *Illinois Central R. Co.*, 263 U. S. 515, 522. We lay to one side cases of discrimination or preference or rivalry so keen as to be a menace to the steady and efficient service called for by the statute. These tendencies excluded, 'a carrier is entitled to initiate rates and, in this connection, to adopt such policy of rate making as to it seems best.'"

In its report and order in I. & S. Docket No. 5139 the Commission endeavored to bring the single-line rates of the Milwaukee and Illinois Central within the scope of the exception stated by this Court, *i. e.*, discrimination and preference. However, as we have shown under points II and III of this brief, there is no basis of fact in this record to sustain a conclusion that those single-line rates are either discriminatory or preferential. No condemnation of these single-line rates is predicated upon the basis that they are either so high or so low as to be unreasonable.

Findings Nos. 9 and 10 are to the effect that the coal rate adjustment cannot be stabilized upon a reasonable and non-prejudicial basis unless and until the maladjustments and inconsistencies inherent in any multiple basis of rates from the respective origin groups is eliminated and that the proposed rates would extend that maladjustment to Beloit and to the Princeton group. (R. 207-208.)

There is no evidence to support the foregoing findings.

There is no evidence that all rates from each group to each destination have in the past been the same; on the contrary the evidence shows that rates via the various carriers serving origins in a group now are not uniformly the same. (Exhibits Nos. 3 and 4; R. 1676-1678.) That situation is not peculiar to the Brazil and Linton groups.

The Act does not confer upon the Commission the power to require six or seven carriers serving origins in a certain wide area to charge the same rate from all such origins. To authorize the Commission to require each carrier serving origins in one of these so-called groups to charge the same rate, there would have to be evidence that such rate was just and reasonable for each such carrier from each such point. There is no such evidence in this record. As pointed out by the District Court in the prior decision involving these single-line rates of the Milwaukee, *Chicago, Milwaukee, St. Paul & Pacific R. Co.* v. *United States*, 8 F. Supp. 970, at page 974, referring to Section 15 a (2) of the Act:

> "As it stood in 1920, the Commission was authorized to initiate, modify, establish, or adjust rates so that carriers *as a whole* (or as a whole in each of such rate groups as the Commission might from time to time designate) would under honest, efficient, and economical management earn an annual net operating income equal as near as might be to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation. There is nothing in the section as it now stands authorizing the Commission to establish rates above a reasonable minimum for one railroad merely to enable another railroad in the group not so well situated, to earn a fair return, even if the act of 1920 did so provide. Nor is there any evidence in the record that the proposed rates of the Milwaukee if allowed to stand will so affect the earning capacity of any other railroad."

So in this record, there is no evidence that any more coal will move from the other origins in the Brazil and Linton groups if the Milwaukee rates are increased. The petition for rehearing filed by these appellants pointed out that if the propriety of the single-line rates of the Milwaukee as such were in issue, evidence could be introduced to show such rates did not injure other shippers in Indiana, and that the Milwaukee had always held itself ready to join with other carriers serving mines in those groups in the publication of rates on the same level as the single-line rates of the Milwaukee.

The attempt of the Commission to require all carriers serving origins in one of these so-called origin groups to charge the same rate to each destination is beyond its power. Each carrier is free to charge such rates as it deems desirable so long as such rates do not violate any of the provisions of the Act. In the case of *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627, at page 636, it is stated:

> "As the carriers are in competition for the business they may, within the zone of reasonableness, prescribed by the statute, adjust their rates so as to obtain or retain the desired traffic for their own lines. *Interstate Commerce Commission* v. *Alabama Midland Ry. Co.*, 74 Fed. 715, 723-4; 168 U. S. 144, 172-3; *Skinner & Eddy Corp.* v. *United States*, 249 U. S. 557, 564; *United States* v. *Illinois Central R. Co.*, 263 U. S. 515, 522."

The order of the Commission, and its assumed power to require the Milwaukee to charge the same rates as the other carriers serving origins in the Brazil and Linton groups, would deprive the carriers of this right to initiate and maintain rates within the zone of reasonableness.

VIII.

The Order of the Commission Is Arbitrary and Capricious Because Not Supported by Adequate and Suitable Findings of Fact or by Evidence, and the Report Affords No Rational Basis Therefor.

The report and order of the Commission are arbitrary and capricious in several particulars. The report and findings of fact contained therein wholly fail to afford a rational basis for the conclusions of the Commission or its order.

A. There Is No Basis in Law or in Fact to Justify the Conclusion of the Commission That Rates from All Origins in a Group Must Be Equal to Common Destinations.

The report of the Commission, Findings Nos. 4 and 6 (R. 206-207), condemns different rates from the same group or district via routes of different carriers. In this way it seeks to treat the carriers serving a district as a single unit or group. While under Section 15 a (2) of the Act, as amended by the Transportation Act of 1920, there might have been justification for the contention that such authority existed, the later amendments of that section in 1933 and 1940 have limited the authority of the Commission in this regard. *Chicago, M., St. P. & P. R. Co. v United States*, 8 Fed. Supp. 970, 974; *Florida* v. *United States*, 292 U. S. 1, 6, 7. There is now no basis in the law for treating the carriers serving any territory as a single unit.

There is nothing in the Act which requires the B. & O., for example, to charge the same rate from mines served by it in the Princeton group to Rockford, a haul of 476 miles, as is charged by the C. & E. I. from mines served by it in that group for a haul of 334 miles to Rockford. Nor is there any requirement of law that the Milwaukee must

charge the same rate as the Pennsylvania from Linton group origins to Freeport, where the Milwaukee haul is 313 miles and the Pennsylvania haul is 414 miles. These are but two of the numerous instances shown in the evidence where the distances via one carrier serving mines in the same group are 50 miles to more than 100 miles greater to the same destination than the distances via another carrier serving mines in the same group. (Ex. No. 28; R. 1686.)

The report is inconsistent in that it condemns the carriers for not charging the same rate from all origins in a group via all routes, where specific rates are published; but approves the situation where the carrier fails to publish specific rates from points on its line in a group to some destinations, while meeting competition by publication of rates to other destinations. The report in this respect would deprive the carriers of the privilege of publishing rates within the zone of reasonableness which this Court has consistently ruled is a right of the carriers. *United States* v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, 506, and cases cited therein.

Another illustration of the report treating the carriers as a single unit is Finding No. 13 (R. 208) and the approved rates from the Boonville and Princeton groups, merging the two groups on an equal rate because one mine in the Princeton group served by the New York Central is but 10 miles, across country, from a mine in the Boonville group served by the Southern. As we have pointed out in Part V, *supra*, pp. 69-72, the Southern is the only carrier serving mines in the Boonville group; those mines are located on a branch line running from Huntingburg, Indiana, to Evansville, Indiana. The Princeton group is served by the New York Central, C. & E. I., Southern, B. &. O. and the A. W. & W., a short line connecting with

the New York Central and Southern. The mines on the Southern in the Princeton group are on its main line from Louisville to St. Louis. The Southern must haul coal from Boonville mines over 45 miles farther than from the mines served by it in the Princeton group, but because the New York Central has a long haul from its Princeton mines the report would consolidate the two groups. As shown by Appendix D to the report, the Boonville mines on the average have a 34 mile longer haul than the Princeton mines to destinations in northern Illinois. (R. 220.) There is no basis in fact or in law for requiring the Southern to charge the same rate from Boonville as from its Princeton mines, or from the mines served by the New York Central in the Princeton group.

The report is inconsistent in requiring a parity of rates from the Boonville and Princeton groups, where the difference in distance is 34 miles, while requiring a difference of 10 cents per ton as between the Brazil and Linton groups where the average difference in distance is 36 miles. (R. 220.)

The report and order of the Commission are in this respect contrary to the law and should be enjoined.

B. The Report Fails to Disclose Any Logical or Rational Basis of Fact or Law for the Rates and Rate Relationships Approved in the Report and Is Therefore Arbitrary and Capricious.

Throughout the report, and in Finding No. 19 and Conclusions Nos. 1, 2, 3 and 6 therein, reference is made to the rates approved in the proceeding and set forth in Appendices A and D of the report. (R. 210-216, 220.)

Appendix A to the report shows approved rates to twelve destinations in Illinois and Beloit; six different rates are approved from the Brazil group, which is the base group in Indiana. The following rates are approved

for the following distances: $1.84 for 213 and 217 miles; $1.89 for 246, 255, 257 and 287 miles; $1.95 for 248 and 266 miles; $2.02 for 265 miles; $2.07 for 251, 258 and 287 miles; and $2.22 for 269 miles. (R. 213-216.)

No reason is given for approving a rate of $1.89 for transporting coal 257 miles to Dixon, while approving a rate of $2.07 for like transportation for 251 miles to Rockford and 258 miles to Belvidere. No reason appears in the report for approving a rate of $1.89 for a transportation service of 287 miles to Sterling and a rate of $2.07 for like service to Freeport. For transportation services involving average hauls of 265, 266 and 269 miles, the Commission has approved rates of $2.02, $1.95 and $2.22, respectively, and has stated those are all reasonable, non-prejudicial and non-preferential rates.

No reasons are given to sustain that statement. The grossly inconsistent rates are approved without any consideration of the facts pertaining to the service from the Brazil group to any of the destinations. The only matter considered was the average of these arbitrary and inconsistent rates to all of the twelve destinations from each group in Indiana, which we discuss under Part VI of this argument, *supra*, pp. 72-75.

If those average rates are reasonable, then the rates from the individual groups are unreasonable. For example, Appendix D shows the average distance from the Brazil group to the twelve destinations to be 256 miles, and the average approved rate to be $1.95. This shows that the approved rate of $2.07 from Brazil to Rockford, 251 miles, is unreasonable. It also shows that the $1.89 rate from Brazil to Dixon for 257 miles is improper. Since the approved rates from the Linton and Princeton groups are on the basis of the standard differentials over the Brazil group rates, those other rates reflect the same arbi-

trary disregard of distance and service as do the approved rates from the Brazil group.

Another comparison shows that the approved rates are arbitrary and capricious. The Commission has found (Finding No. 8; R. 207) that the transportation conditions in Illinois and from Indiana to these northern Illinois destinations are sufficiently similar to require the same rate basis from the groups in both States. Notwithstanding that finding, the approved rates from Indiana to the important destinations are much higher than from Illinois for like distances. From the Springfield group to Rockford the distance is 257 miles, approved rate $1.95; from the Brazil group the distance is 251 miles, approved rate $2.07. (R. 216.) To Belvidere, the distance from the Springfield group is 279 miles, the approved rate $1.95; from the Brazil group the distance is 258 miles, approved rate $2.07—a 12 cent higher rate for a 21 mile shorter haul. (R. 213.) To DeKalb, the distance from the Springfield group is 210 miles, the approved rate $1.75; from the Brazil group, the distance is 213 miles, the approved rate $1.84—here Indiana is charged 9 cents more for a 3 mile longer haul, while to Geneva, where the distance from Springfield is 230 miles and from Brazil 217 miles, the approved Springfield rate is $1.75 and the approved Brazil rate $1.84, Indiana is charged 9 cents per ton more for a 13 mile shorter haul. (R. 213, 214.) To Beloit, the average distance from the Springfield group is 276 miles, from the Brazil group the average distance is 269 miles, but the Springfield approved rate of $2.10 remains in effect, and the Commission approves a rate from Brazil of $2.22, or 12 cents more per ton from Brazil for a 9 mile shorter haul than from Springfield. (R. 216.)

True the Commission says that the Springfield rate is 30 cents less than the Southern Illinois rate to all destinations in southern Wisconsin, but the evidence shows

that the Brazil rates are also 30 cents less than the Southern Illinois rates to all destinations in southern Wisconsin (R. 1068), and that the Commission approved that relationship between Southern Illinois and Brazil as fair and reasonable to all concerned in the case of *Illinois Coal Traffic Bureau* v. *Ahnapee & W. Ry. Co.*, 204 I. C. C. 225.

The arbitrary character of the approved rates from Indiana, by comparison with the approved rates from Illinois groups, could be shown by innumerable comparisons. In the case of the Princeton and Belleville groups, the Princeton distance to Belvidere is 364 miles, rate $2.24; Belleville distance 395 miles, rate $2.15. (R. 213.) From Belleville to DeKalb the distance is 314 miles, approved rate $1.95, with Linton to DeKalb 257 miles, approved rate $1.94. Indiana is accorded a one cent lower rate for a 57 mile shorter haul. (R. 213.) To Geneva, the Belleville group approved rate is $1.95 for a distance of 353 miles, while the Princeton approved rate is $2.01 for a distance of 313 miles. The Indiana rate is 6 cents per ton more for a 40 mile shorter haul than from the Illinois group. (R. 214.) We believe the foregoing examples clearly show that the approved rates are arbitrary and capricious.

The relationships between the approved rates from Indiana and those from Illinois groups are wholly arbitrary. The rates from Indiana for many years have been constructed in relation to the rates from Southern Illinois. The rate from Southern Illinois was fixed and the rate from the Brazil group in Indiana established at, in this general territory, 30 cents per ton under the Southern Illinois rate; this was done in all the general percentage increases and decreases in rates since 1910. (R. 1067-1068.)

In the rates approved no fixed relationship as between the Southern Illinois group and the Brazil group is main-

tained. As between the Southern Illinois group and the Brazil group there are differences of 16, 18, 21 and 25 cents per ton in the approved rates. There is no relation between the difference in rates and the difference in distance. (R. 213-216.) To Belvidere, the distance difference is 170 miles, the approved rate difference is 18 cents (R. 213); to Forreston, the difference in distance is 83 miles, but the rate difference is 25 cents (R. 214); while at Rochelle, the rate difference is only 16 cents for a difference in distance of 100 miles. (R. 215.) Under the approved rates 16 cent differences in rates of the Brazil and Southern Illinois groups apply to differences in distance of 42, 55, 67 and 100 miles; 18 cent rate differences apply to differences in distance of 70, 80, 84, 122 and 125 miles; 21 cent differences in rates apply to differences in distance of 125 and 165 miles; and 25 cent rate differences apply to 83 and 115 mile distance differences. (R. 213-216.) No facts or reasons are given for these inconsistent and arbitrary differences.

As between the Southern Illinois group and the Springfield group, the rate difference is uniformly 30 cents per ton—the difference in distance varies from 92 miles to 155 miles. (R. 213-216.) If 30 cents is reasonable and proper as between Southern Illinois and Springfield, for a difference in distance of 106 miles, why is 18 cents proper as between Southern Illinois and Brazil where the difference in distance is 112 miles? If 30 cents is proper for 92 miles as between Southern Illinois and Springfield at Freeport (R. 214), why is 16 cents proper for a difference of 100 miles as between Southern Illinois and Brazil at Rochelle? (R. 215.) The report of the Commission fails to give any explanation for these extraordinary situations.

Byron and Forreston, where Brazil has the most favorable differentials, have populations of 1,113 and 922,

respectively. Polo, where Brazil is accorded a difference in rates of 18 cents for a more favorable distance of 84 miles, has a population of 2,071. Rockford has a population of 84,000, but there Brazil has an approved rate difference of only 18 cents, where distance favors it by 112 miles under Southern Illinois. At Belvidere, population 8,000, the Southern Illinois rate is but 18 cents more than Brazil, though the Southern Illinois distance is 170 miles greater than from Brazil. At Geneva, population 4,000, and DeKalb, population 9,000, the Southern Illinois approved rate is but 21 cents more than from Brazil, though the distance favors Brazil by 125 and 165 miles, respectively. (Ex. No. 117; R. 1700.)

The result of approving a high level of rates from Indiana to Rockford, Freeport, DeKalb, Geneva, and Belvidere, and a much lower level to Amboy, Byron, Forreston, Polo, Rochelle and Sterling, is that when those rates are averaged they appear to be comparable with the average from Illinois. We submit; however, that each destination is entitled to a reasonable rate. It may be noted that the population of the cities first named where the Indiana approved rates are relatively high totals 139,015, while the population of those cities to which the Indiana rates are relatively lower totals only 10,362. (Ex. No. 117; R. 1700.) It should also be noted that to each destination the Springfield group rate is lower than the Brazil group rate.

In this connection we call the Court's attention to its decision in *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627, where it said at page 637:

> "While the carriers may, therefore, meet competition by equalizing rates or maintaining differentials both to interior points and to ports, they may not adjust their rates with the motive of injuring or aiding a shipper, a particular kind of traffic, or a

locality, for so to do is to depart from the transportation standard, conformity to which the Act contemplates, and substitute others which are prohibited. A tariff published for the purpose of destroying a market or building up one, of diverting traffic from a particular place to the injury of that place, or in aid of some other, is unlawful, and obviously, *what the carrier may not lawfully do, the Commission may not compel.*" (Emphasis supplied.)

C. The Report Fails to Disclose Any Logical or Rational Basis of Fact or Law for the Rates and Rate Relationships Approved to Beloit, and Its Approval of Rates to Beloit Is Arbitrary and Capricious.

The report approves rates from all groups in Indiana and Illinois to Beloit. (R. 220.). The report condemns the proposed rates to Beloit because there would be different rates from origins on the Milwaukee via its single line than from other origins in the Brazil and Linton groups, and different rates from origins on the Southern and origins on the A. W. & W. moving via the Southern, in the Princeton group, than would apply under the proposed rates from other origins in the Princeton group. (R. 205, 207, 211.)

Neither the Milwaukee, via its single line, nor the Southern published any new rates from origins served by them in the Brazil and Linton groups or the Princeton group, respectively. Their present rates were not changed to Beloit. Those rates were not before the Commission in this proceeding. The Commission so states in its report, page 202. (R. 192.) Notwithstanding the fact that the so-called dual basis of rates to Beloit is the result of action by carriers other than the Milwaukee and Southern, the Commission condemns the Milwaukee and Southern for not following the lead of the other carriers serving Indiana, and concludes that the proposed rates published by carriers over whom those two carriers

have no control result in a violation by the Milwaukee and the Southern of Sections 2 and 3 (1) of the Act.

This we submit is arbitrary and capricious action which should be corrected by this Court.

The Commission's attempted justification of the approved rates and relationships to Beloit appears at pages 202 to 204 of the report. (R. 192-195.) The approved rates from the various origin groups appear in Appendix D of the report (R. 220), where the distances and rates from the principal groups to Beloit appear as follows:

Group	*Distance*	*Approved Rate*
Brazil	269	$2.22
Springfield	276	2.10
Linton	302	2.32
Belleville	358	2.30
Princeton	379	2.39
Southern Illinois	394	2.40

It will be noted that in each instance the rates from the Illinois groups are on a substantially lower level than from the Indiana groups, notwithstanding the Commission's finding that rates from both States should be on the same level. (R. 207.)

In connection with the distances shown above from the Belleville and Centralia groups in Illinois, the only evidence of shortest tariff route distance from those groups (Ex. No. 28; R. 1686) shows those distances as 383 miles from Belleville and 331 miles from Centralia—whereas Appendix D to the report shows but 358 and 283 miles, respectively, from those groups. The short tariff route distances from those groups shown in Exhibit No. 42 (R. 1688) are 389.8 and 321.9 miles, respectively, and in Exhibit No. 3, Part V, pages 37 and 38 (R. 1676), are 357.8 miles and 343.4 miles, respectively.

No reason is stated to sustain a rate from Brazil 12

cents per ton higher than from Springfield for substantially the same distance. No reason is stated for approving a rate from Linton 2 cents per ton higher than from Belleville where the Linton distance is stated to be 56 miles shorter, but which the evidence shows to be 81 miles shorter. No reason is given for approving a rate from Princeton only one cent less than from Southern Illinois when the distance from Princeton is 25 miles shorter than from Southern Illinois. (R. 220.)

While this Court has ruled that inconsistency between two decisions of the Commission could not be relied upon, it has never sustained a report and order where the same report is wholly inconsistent in its reasoning and results.

We submit that the approved rates to Beloit are arbitrary and capricious and the order, so far as it would require maintenance of rates on those relationships or permits the publication of such rates, should be enjoined.

D. The Report and Order Are Arbitrary and Capricious in That the Approved Rates Would Insure Illinois Operators a Practical Monopoly in the Beloit and Northern Illinois Markets.

The Illinois operators introduced evidence that since 1923 they have lost substantially in the markets in Iowa, Wisconsin, Minnesota and states farther west and in Indiana, and that the northern Illinois market is now more important to them than formerly. (R. 1504-1511.) The only evidence of shipments of coal to destinations in northern Illinois and Beloit is contained in Exhibit No. 4, Part VIII (R. 1677), which shows shipments from each group to each of seven Illinois destinations and Beloit for 1941 and the first six months of 1942, and Exhibit No. 99 (R. 1697) which shows shipments to the same points from all of Illinois and all of Indiana for 1936 and 1941.

Other exhibits dealing with production and shipments were total shipments to Chicago, shipments to Indiana,

and shipments to various states. (Exs. Nos. 100 and 101; R. 1697.) These latter shipments have no bearing on any issue in this case, but the Commission apparently deems them important to the decision of this case. See Report, pages 197 and 198. (R. 185, 186.) What bearing the fact that Illinois shipments to Indiana declined 12.5 per cent from 1936 to 1941, while Indiana shipments to Indiana increased in that period, has on the rates to Rockford, Illinois, does not appear, but the Commission has apparently been swayed by that fact in reaching its conclusions in this case.

Exclusive of Rockford, where all Indiana coal was practically barred by reason of the intrastate reduction in rates in 1930, and where no competitive Indiana rates were assured until the decision of this Court in March of 1935 in *United States* v. *Chicago, Milwaukee, St. Paul & Pacific R. Co.*, 294 U. S. 499, Exhibit No. 99 shows that in 1936 Indiana shipped 70,000 tons of coal to the other six Illinois points and 51,000 tons to Rockford; while in 1941 it shipped 57,000 tons to the other six points and 211,500 tons to Rockford. In 1936, Illinois shipped 338,800 tons to the other six points and 208,000 tons to Rockford, and in 1941 it shipped 292,700 tons to the six points and 276,000 tons to Rockford. (Ex. No. 99; R. 1697.)

Bearing in mind that the principal Indiana groups are nearer this market territory than the principal Illinois groups (R. 486A), it is clear that Illinois does not require any help from the Commission when it does and has shipped approximately 5 tons of coal to this territory, exclusive of Rockford, for every ton shipped by Indiana to all these destinations other than Rockford.

The report and order of the Commission is in direct conflict with the law as stated in the case of *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627, 637, from

which we quote, *supra*, p. 87, to the effect that carriers may not publish a rate for the purpose of destroying a market or diverting traffic from a particular place to the injury thereof or to help another place, and "what the carriers may not lawfully do, the Commission may not compel."

The Commission relies in its report, page 194, on the statement by the carriers that the proposed and suspended rates will not result in the diversion of any traffic from one group to another. (R. 182.) However, the carriers' proposed rates to maintain the same relationship between the Milwaukee and Illinois Central single-line rates to Rockford and other destinations as had existed for several years, while the approved rates and the order requiring the Milwaukee and the Illinois Central to increase their single-line rates will directly affect over 78 per cent of the Linton tonnage and over 95 per cent of the Brazil tonnage to Rockford. These shipments exceeded all shipments from Indiana to the involved territory.

Certainly the Commission is not giving effect to the principle stated on page 204 of its report, that "we have kept in mind the importance to consumers, coal operators, and railroads * * * so as to afford all concerned a fair opportunity to compete in the purchase, sale and transportation of coal from Illinois and Indiana to these destinations." (R. 194.) If the Commission had kept those factors in mind it would not (1) require an increase in the rates of the Milwaukee and Illinois Central to a basis higher than rates for similar distances and service from Illinois mines, (2) deprive consumers of the benefits of the single-line rates of the Milwaukee and the Illinois Central, (3) deprive the Milwaukee of an opportunity to transport coal from mines on its line and divert

that traffic to lines serving Illinois mines, and (4) deprive Indiana operators of an opportunity to compete on the same level of rates with Illinois operators seeking business at Rockford, Freeport, Geneva, DeKalb and Beloit, for example.

Conclusion.

The Commission erred in its report and order in this proceeding, and the District Court erred in failing to enjoin and set aside the report and order of the Commission.

The District Court apparently acted upon a misapprehension of the facts and issues. In its Finding No. 5, the District Court says the Commission entered its order in both Docket No. 28881 and I. & S. Docket No. 5139 on July 9, 1945. This is incorrect. The Commission's order of July 9, 1945, is in I. & S. Docket No. 5139 alone. (R. 222.) The Court's Finding No. 6 states that the Commission in its order "prescribed interstate and intrastate rates to be published and collected by the carriers" pursuant to its authority under Section 15. This is incorrect. The Commission in its order of July 9, 1945, did not prescribe any rates—it ordered the removal of violations of Sections 2 and 3 (1) of the Act. It had no power to prescribe intrastate rates, except as provided in Section 13 (4) of the Act.

Conclusions of Law of the District Court, Nos. 2 to 6, inclusive, are, we submit, erroneous for the reasons hereinabove stated.

We, therefore, respectfully urge that the judgment and decree of the District Court be reversed, and this cause be remanded to said Court with instructions to enter a decree enjoining the order of the Commission dated July 9, 1945, except the part thereof requiring the cancellation of the new rates, and enjoining and setting aside the report of

the Commission in so far as it purports to approve rates from origins and groups in Indiana and Illinois to Rockford and other destinations in northern Illinois and Beloit, Wisconsin.

Respectfully submitted,

Earl B. Wilkinson

EARL B. WILKINSON,

Arthur R. Hall

ARTHUR R. HALL,

Attorneys for Ayrshire Collieries Corporation, et al., Appellants.

SAMUEL W. WITWER, JR.,
J. ALFRED MORAN,
Of Counsel.

March, 1947.

APPENDIX.

The Urgent Deficiencies Act of 1913, U. S. Code, Title 28, Section 47, provides:

"*Sec. 47. Interlocutory injunctions as to orders of Interstate Commerce Commission; appeal to Supreme Court.* No interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless a majority of said three judges shall concur in granting such application. When such application as aforesaid is presented to a judge, he shall immediately call to his assistance to hear and determine the application two other judges. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the Interstate Commerce Commission, to the Attorney General of the United States, and to such other persons as may be defendants in the suit. In cases where irreparable damage would otherwise ensue to the petitioner, a majority of said three judges concurring, may, on hearing, after not less than three days' notice to the Interstate Commerce Commission and the Attorney General, allow a temporary stay or suspension, in whole or in part, of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of said judges pending the application for the order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judges making the order and identified by reference thereto, that such irreparable damage would result to the peti-

tioner and specifying the nature of the damage. The said judges may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until decision upon the application. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission, the same requirement as to judges and the same procedure as to expedition and appeal shall apply. (Oct. 22, 1913, c. 32, 38 Stat. 220.)"

The Interstate Commerce Act, as amended, U. S. Code, Title 49, Sections 2, 3(1), 13(1), 13(4), 15(1) and 15(7), provides in part:

"Sec. 2. If any common carrier subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful."

"Sec. 3. (1) It shall be unlawful for any common carrier subject to the provisions of this chapter to

make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description."

"Sec. 13. (1) Any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this chapter, in contravention of the provisions thereof, may apply to said commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

* * * * *

"Sec. 13. (4) Whenever in any such investigation the commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

"Sec. 15. (1) Whenever, after full hearing, upon a complaint made as provided in section 13 of this chapter, or after full hearing under an order for investigation and hearing made by the commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this chapter for the transportation of persons or property, as defined in the first section of this chapter, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this chapter, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this chapter, the commission is authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares,

or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

* * * * *

"Sec. 15. (7) Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the commission may make such order with reference thereto as would be proper

in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after September 18, 1940, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible."

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. 467

AYRSHIRE COLLIERIES CORPORATION, ET AL., AND CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA.

BRIEF FOR RAILROAD APPELLANT.

J. E. GOGGIN,
WILLIAM L. HUNTER,
CARSON L. TAYLOR,
Attorneys for Railroad Appellant.

A. N. WHITLOCK,
M. L. BLUHM,
Of Counsel.

THE BLAKEMORE-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

INDEX.

	PAGE
Opinion and Reports Below	1
Jurisdiction	2
Statement of the Case	2
Specification of Errors	8
Summary of Argument	9
Argument:	
I. An Injunction Proceeding, the Object of Which Is to Set Aside an Order of the Interstate Commerce Commission, Must be Heard and Determined by a District Court, Consisting of Three Judges	11
II. A Railroad Has the Right to Initiate Rates and the Interstate Commerce Commission Can Require a Cancellation of Schedules Stating New Rates Only After a Hearing and Appropriate Findings Supported by Substantial Evidence That the Proposed Rates Are Unlawful	13
The Act clearly provides that the Commission can only require the cancellation of schedules proposing new rates when, after hearing, there is a finding supported by evidence that such proposed rates are unlawful	15
The Commission exceeded its power and required the cancellation of proposed schedules without adequate and essential findings to support its order	17
The Report of the Commission discloses the real reason for the condemnation of the rates and clearly demonstrates the Commission's misconception of its power	23

III. The Rates of a Carrier Can Be Condemned as Discriminatory, Prejudicial or Preferential, Within the Meaning of the Act, Only When the Carrier Has it within Its Power to Remove the Wrong 27

Even though the Milwaukee controlled both the higher and lower rates the Commission could only require a removal of discrimination by affording the railroad an alternative.. 31

IV. The Commission's Comparison of Average Rates and Distances From Each Origin Group to 12 Destinations Offers No Support For Its Order.. 32

V. The Commission's Report..... 33

Conclusion 35

Table of Cases.

Anchor Coal Co. v. United States, 25 F. (2d) 462.... 18

Beaumont Sour Lake & Western Ry. Co. v. United States, 282 U. S. 74.....17, 18, 34

Central R. R. Co. of N. J. v. United States, 257 U. S., 247..... 27

Coal to Illinois and Wisconsin, 232 I. C. C. 151..... 8

Colorado-Wyoming Gas. Co. v. Federal Power Commission, 324 U. S. 627..... 34

Cumberland Tel. & Tel. Co. v. Louisiana Public Service Commission, et al., 260 U. S. 212..... 12

Fairbanks, Morse & Company v. Alton & Southern R. R. Co., 251 I. C. C. 181.....6, 13, 33

Fairbanks, Morse & Company v. Alton & Southern R. R. Co., 195 I. C. C. 365..... 5

Florida v. United States, 282 U. S. 194.....17, 18

Interstate Commerce Commission v. Columbus & Greenville Ry., 319 U. S. 551.....14, 17, 34

Interstate Commerce Commission v. L. & N. Ry. Co., 227 U. S. 88..... 16

Norwegian Nitrogen Corp. v. United States, 288 U. S. 294..... 18

Southern Pacific Co. v. Interstate Commerce Commission, 219 U. S. 443..... 18

Texas & Pacific Ry. Co. v. United States, 289 U. S. 627.....14, 16, 20, 29, 31

United States v. C. M. St. P. & P. R. R. Co., 294 U. S. 499.....2, 3, 5, 14, 16, 18, 19, 23, 25, 34

United States v. Carolina Freight Corp., 315 U. S. 475 17

United States v. Illinois Central R. R., 263 U. S. 515.. 14

Statutes Cited.

Section 1, Interstate Commerce Act..... 19
Section 2, Interstate Commerce Act.....19, 20, 27, 38
Section 3(1), Interstate Commerce Act..19, 20, 21, 23, 27, 28
Section 4, Interstate Commerce Act.....19, 20
Section 15 (1), Interstate Commerce Act..... 20
Section 15 (7), Interstate Commerce Act.....15, 16
Section 47 of Title 28..... 11
Section 210 of the Judicial Code..... 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 467.

AYRSHIRE COLLIERIES CORPORATION, ET AL., AND CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA.

BRIEF FOR RAILROAD APPELLANT.

OPINIONS BELOW.

The District Court filed no opinion. It did make certain Findings of Fact and Conclusions of Law. (R. 108.) These have not been published.

The report of the Interstate Commerce Commission (R. 164) is set forth in 263 I. C. C. 179.

JURISDICTION.

The final decree of the District Court was entered on June 5, 1946. (R. 111.) The petition for appeal was filed on July 30, 1946. It was allowed on August 1, 1946. (R. 119.) The jurisdiction of this Court is invoked under Section 210 of the Judicial Code (38 Stat. 220; 28 U. S. C., Sec. 47a).

STATEMENT OF THE CASE.

Two suits in this cause were originally filed in the District Court. One was brought by the Indiana coal mining companies for the coal producers of Indiana, and one was brought by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter sometimes referred to as the "Railroad", or the "Milwaukee".

Since the issues were quite similar and because each petitioner asked that the order of the Interstate Commerce Commission be set aside, the cases were consolidated for trial. They remain so consolidated in this appeal from a judgment dismissing both petitions. (R. 111.)

This brief is concerned only with the law and facts upon which the Railroad relies. The Indiana operators have filed a separate brief.

The issues involved can best be delineated by stating that the case at bar is essentially simply a retrial of the issues previously determined by this Court in *United States* v. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company*, 294 U. S. 499.

In that case, Mr. Justice Cardozo, who spoke for the Court, condemned a report and order of the Interstate Commerce Commission because it denied to the same railroad, appealing herein, its right to establish rates which it considered necessary to permit it to transport coal in competition with other rail carriers. In condemning the order, Mr. Justice Cardozo defined a "zone of reasonableness" within which a carrier is privileged to exercise its own discretion in adjusting its charges. Such rates must be upheld, he said, unless by the most precise and clear findings they can be held to violate some section of the Interstate Commerce Act.

The order in question in this case deals with competitively compelled rates on coal. They are proposed by the same railroad, and generally they apply between the same points involved in the above cited decision.

It is believed, and sincerely urged, that the decision in *United States* v. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company*, 294 U. S. 499, *supra*, requires the setting aside of the present order. The Commission has again exceeded the scope of its delegated powers. It has again performed an act previously condemned in unequivocal terms by this Court.

It is the earnest contention of the appellant railroad that unless it is set aside, the Commission's order will unquestionably prohibit the appellant from competing for the transportation of coal from mines located on its tracks to important coal-consuming destinations. This is an inescapable consequence of the order, since it requires the Milwaukee Railroad to assess higher rates for shorter hauls than its competitors charge for longer hauls from other mines to the same destinations. That the Commission should promulgate an order having this result is anomalous in view of its finding that transportation con-

ditions in this area are all so similar that they require the application of the same rate basis. (Finding Number 8, R. 207.)

Not only is competition between rail carriers stifled by the order but it also places in an unfavorable competitive position the producers of coal whose mines are located on the Milwaukee Railroad. Because of the higher rates on the Milwaukee, these producers cannot compete in the sale of coal in important industrial cities with those producers located on other railroads whose transportation charges are less for longer hauls.

With the exception of the question raised herein concerning the competency of a trial Court consisting of only two judges to determine the issues in this case, and which will be more fully discussed later, this Court need only examine the report and order of the Commission (R. 164) to determine the facts upon which the Railroad relies. Insofar as the case of the Railroad is concerned, these facts are not in dispute.

To one not familiar with coal rate adjustments, however, the Commission's long report is likely to be confusing. If the appellant Railroad cannot make the issues clear to this Court, there is a strong possibility that the Commission's order will be sustained on the assumption that that Body was correct in its conclusions concerning a subject in which it is expert. Accordingly, we shall attempt to make our statement of the facts and issues with greater clarity than they appear in the report.

Bituminous coal is produced in Illinois, in Indiana, and in western Kentucky. Markets for this coal are located principally in the north and west. The better quality of eastern coal makes sales in that direction inconsequential. In the making of rates, it is the common practice to group together mines which are located in the same general area.

Stated otherwise, a common rate applies from all the mines in a given group to any particular destination. There are a number of such mining groups in Illinois and in Indiana.

We are here principally concerned with the Springfield and the southern Illinois groups in Illinois, and those known as the Brazil, Linton, Princeton and Booneville groups in Indiana. The Milwaukee serves mines only in the Brazil and Linton groups and no other mines in the mid-west. (R. 176.) Due to the insistence of the Milwaukee Railroad of its right to establish and maintain competitive rates with those applicable from mines in Illinois, the rates via its single line from mines it serves to Rockford, have been lower than the rates from other mines in the groups on other railroads, as those railroads failed to make reductions to conform to changes required by the Illinois Commerce Commission in the rates from Illinois mines to Rockford. There is one exception, the Illinois Central Railroad has for some time published competitive rates from mines it serves in the Linton group. The right of the Milwaukee Railroad to maintain rates which would permit it to compete in the movement of coal traffic was before this Court in *United States* v. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company*, 294 U. S. 499, *supra*. The map to be found at the end of this statement of facts delineates clearly, it is believed, the location of these groups. On July 20, 1933, the Commission issued an order (*Fairbanks-Morse Company, et al.* v. *Alton & Southern Railroad, et al.*, 195 I. C. C. 365) in which it found that differences in rates from the above groups were prejudicial to Beloit, Wisconsin when compared to the rates from the same origins to Rockford, Illinois. Since the carriers were at liberty to correct the prejudice by whatever means they chose, they reduced the rates to Beloit.

On March 3, 1942, the Commission issued another report

(*Fairbanks-Morse Company* v. *Alton & Southern Railroad, et al.*, 251 I. C. C. 181) in which the rates on coal from mines in Illinois, Indiana and western Kentucky to Beloit, Wisconsin were found to be reasonable but nevertheless prejudicial to Beloit, as compared to the lower rates from the same origins to Rockford, Illinois.

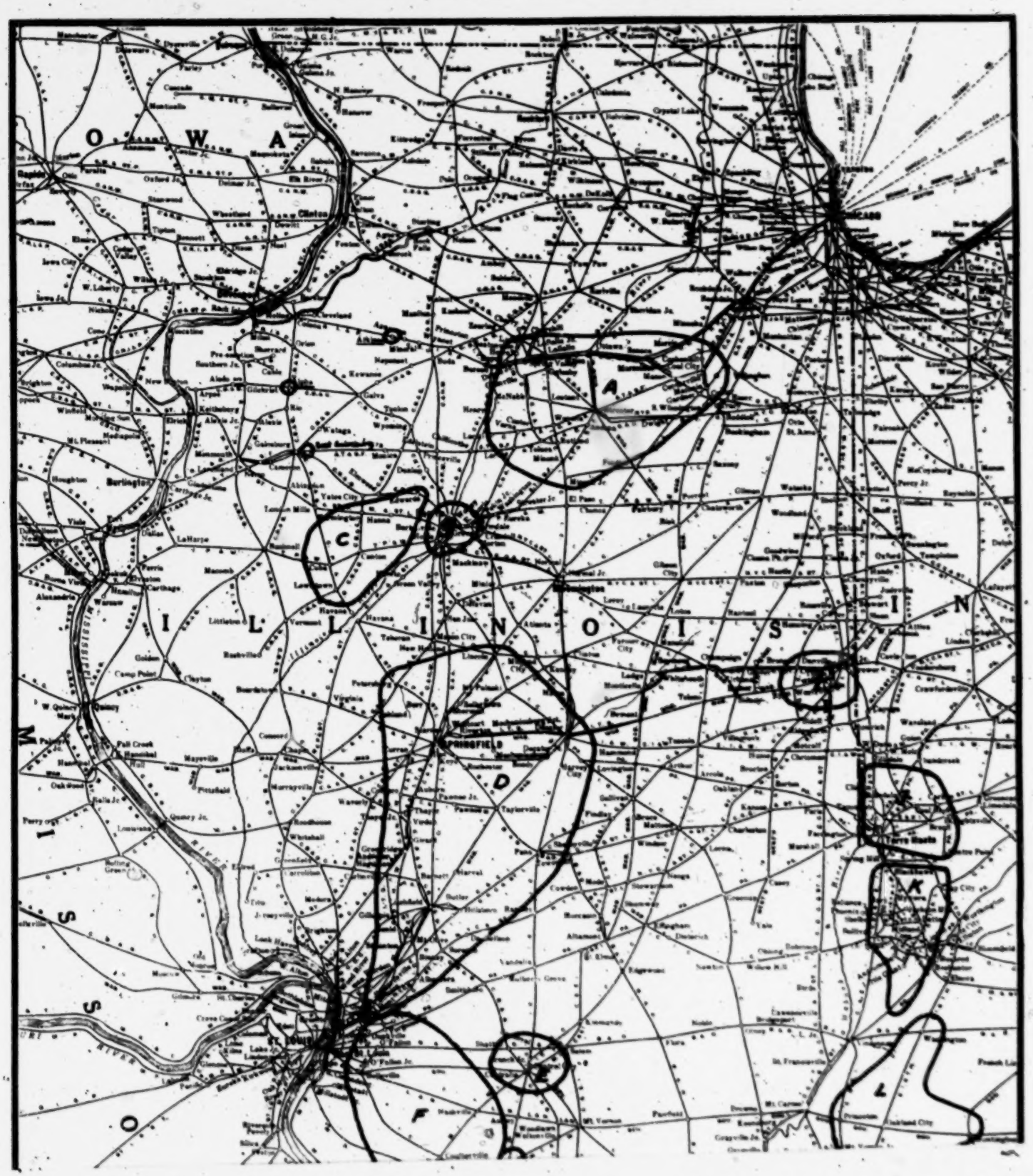
Since the first order had been complied with by reducing the rates to Beloit, the carriers now determined to comply with the new order by increasing the rates to Rockford. In doing this, they reasoned that since the rates to Rockford had been relatively low, the increase made necessary by the order would bring the rates more nearly in conformity with the general level of interstate coal rates in the territory. (R. 168.)

Accordingly, the carriers published new schedules which generally increased rates to Rockford from all mining groups. They proposed no change in the rates to Beloit, except in a few instances which are of no consequence here.

Rockford is located in northern Illinois. It is only 18 miles south of Beloit, Wisconsin. Accordingly, speaking generally, coal from any of the above-named groups must travel 18 miles farther on the Milwaukee Road to arrive at Beloit than to reach Rockford.

The Milwaukee Road serves both Rockford and Beloit. It also serves mines in the Brazil and Linton groups in Indiana. As did the other carriers, and as previously stated, the Milwaukee Road proposed increases in compliance with the second order in its rates to Rockford but made no change in its rates to Beloit. The Commission then issued the order which is here under review. In that order, it approved, with certain exceptions not pertinent here, all of the rate adjustments proposed by the railroads with the exception of those rates proposed by the Milwaukee Road. It is the Commission's refusal

COAL PRODUCING GROUPS IN ILLINOIS, INDIANA AND WESTERN KENTUCKY.



to approve the Milwaukee Railroad's rates which presents the issue on this appeal.

The order, in essence, required that the Milwaukee make greater increases in its rates to Rockford than those it proposed and *also* make an increase in its rates to Beloit. The Milwaukee had originally proposed to increase the rates to Rockford by 15¢. The Commission's order required them to be increased by 27¢. It also required an increase in the rates to Beloit of 12¢. To require that the Milwaukee Road charge a higher rate to these points than that charged by other rail carriers for longer hauls obviously impairs its competitive position as well as that of coal producers located on its line. The legality of an order producing this result must be determined by this Court.

SPECIFICATION OF ERRORS.

It is respectfully urged that the District Court was in error in the following particulars:

1. It determined the issues and dismissed the complaint while one of the statutory three-Judge Court was absent from the bench because of illness and was, therefore, unable to participate in the determination and disposition of the case.

2. It failed to find that the Order of the Commission in I. & S. Docket 5139, *Coal to Beloit, Wisconsin and Northern Illinois* is arbitrary and not adequately supported by findings of the Commission. It failed to find that the order should, therefore, be set aside and its enforcement perpetually enjoined.

3. It failed to hold that a railroad may lawfully initiate rates which are within the zone of reasonableness if the carrier deems such rates necessary to meet competitive conditions.

4. It failed and refused to enjoin the order of the Commission, which order required the appellant railroad to alter its rates in a specific manner, in order to remove alleged discrimination for which the appellant railroad was not responsible.

5. It failed to enjoin enforcement of the Commission's order on the ground that the order, while requiring the removal of discrimination, afforded the carrier no alternative as to the manner in which the removal of discrimination might be accomplished.

6. It failed to enjoin the Commission's order as being arbitrary, based upon a mistake of law and beyond the power delegated to the Commission by Congress.

SUMMARY OF ARGUMENT.

The Appellant Railroad urges that the judgment of the lower Court must be reversed and set aside, as there was no determination of the issues by the required statutory three-Judge Court. Here only two Judges determined the issues and entered the judgment due to the inability of the third Judge to act.

A railroad is free to publish rates necessary for it to participate in competition with other carriers in the transportation of available traffic. Under the law, it has the right to initiate rates which the Interstate Commerce Commission can require to be cancelled or altered only if, after hearing, such rates are found to be in contravention of some provision of the Interstate Commerce Act.

Findings of the Commission, sufficient to support an order requiring the cancellation or alteration of railroad proposed rates, must be clear and precise and inform the parties the reasons which led the Commission to reach its conclusion.

A mere statement by the Commission in its report or order that the involved rate is unlawful, in violation of some particular section of the Interstate Commerce Act, is not an adequate finding. The Interstate Commerce Commission here required the cancellation of proposed rates, and the modification of existing rates with the simple recital that such rates violate Sections 2 and 3(1) of the Interstate Commerce Act. Nowhere in the report, does it appear that the Milwaukee Railroad controls rates applicable for the transportation of coal from the mines or mining areas said to be discriminated against. The Com-

mission nowhere afforded the Milwaukee an alternative method of removing the alleged discrimination.

The report of the Commission is long and involved and recitals in the report convincingly establish that the Commission misconceived its power and believed it could require the Milwaukee Railroad to alter its rates, not because they were violative of some section of the Act but because, in the opinion of the Commission, the rates it ordered altered would fit into a differential relationship of coal rates from the various mining groups, the lawfulness of which relationship was not passed upon.

ARGUMENT.

I.

An Injunction Proceeding, the Object of Which Is to Set Aside an Order of the Interstate Commerce Commission, Must be Heard and Determined by a District Court, Consisting of Three Judges.

The procedure to be followed in an injunctive proceeding, the object of which is to set aside an order of the Interstate Commerce Commission, is set forth in Section 47 of Title 28 of the United States Code. It is stated therein that when such a petition is presented to a Judge he shall call to his assistance, to hear and determine the issues, two other Judges, one of whom at least shall be a Circuit Judge.

The pertinent portion of Section 47 of Title 28, reads, the

> "* * * application * * * shall be presented to a Circuit or District Judge and shall be *heard and determined* by three Judges * * *." (Emphasis supplied.)

The Court to whom this case was submitted and argued consisted of the Honorable Evan A. Evans, Senior Circuit Judge, the Honorable J. Earl Major, Circuit Judge, and the Honorable Michael L. Igoe, District Judge.

After the case had been submitted and argued, but before it had been considered or determined, Judge Evans became ill and was unable to participate further. (R. 108.) Accordingly, while three Judges heard the case, only two participated in its disposition.

This does not comply with the statute, which requires not only that three Judges hear the case but also that the

three Judges determine the issues involved in it. When Judge Evans became ill, the remaining two judges were divested of their power to act under the statute. They had no alternative other than to grant a new trial before a statutorily constituted court.

Judges Major and Igoe, however, held the opinion that since they constituted a majority of the three-Judge court, and since they were in accord as to the conclusions reached, that they might proceed to determine the case.

We think it clear that Congress intended that in proceedings of this character, the power to act is not vested in a court of one Judge or of two Judges but that the issues were of such importance that they must be heard and also determined by a court of three Judges. While it is true, that the majority of the three Judges is empowered to control the conclusion, it is believed that Congress intended that all three-Judges contribute their views before a conclusion is reached.

Nothing can be gained by a lengthy argument concerning this proposition. The language of the statute is clear. A determination can be made only by a court of three Judges.

Mr. Chief Justice Taft, speaking for the Court, in *Cumberland Telephone & Telegraph Company* v. *Louisiana Public Service Commission, et al.*, 260 U. S. 212, in reviewing the action of a District Judge in granting an injunction pending an appeal from an order of a three-Judge Court, which order denied an interlocutory injunction, said on page 218:

> "This statement does not make the order here in question the act of the three judges. Judge Bryan's letter, so far as we are able to judge from this reference, was a mere expression of opinion that Judge Foster as District Judge had the power to grant the injunction, an opinion with which we do not agree.

> The letter was not an attempt by Judge Bryan to become a participant in the order. Nor is there any showing that Judge Clayton took part in the matter. A discussion in conference of the judges as to the granting of an injunction pending an appeal before it was applied for does not supply what is needed to give efficacy to such order by a single judge. Compliance with the statute requires the assent of the three judges given after the application is made evidenced by their signatures or an announcement in open court with three judges sitting followed by a formal order tested as they direct. * * * We have no proper evidence of the participation of the three judges in the injunction here and therefore grant the motion to set it aside as void and made without jurisdiction."

Two Judges, acting without the third, are without jurisdiction either to enjoin a Commission Order or to dismiss an application seeking injunctive relief. The action of the two Judges, in determining the issues and dismissing the petitions, was beyond their power. The petitioners, however, appellants, here, were as effectively denied relief as though a valid order of dismissal had been entered and relief can now be had only by this appeal.

II.

A Railroad Has the Right to Initiate Rates and the Interstate Commerce Commission Can Require a Cancellation of Schedules Stating New Rates Only After a Hearing and Appropriate Findings Supported by Substantial Evidence That the Proposed Rates Are Unlawful.

In compliance with the Commission's order, in *Fairbanks Morse & Co.* v. *Alton & Southern Railroad, et al.*, 251 I. C. C. 181, requiring that the rates applicable to the transportation of coal from mines in Indiana, Illinois and Western Kentucky to Beloit, Wisconsin, should not exceed

those to Rockford, Illinois, by more than 15¢ per ton, the Milwaukee Road filed tariff schedules with the Commission proposing increases of 15¢ a ton from mines which it served in the Brazil and Linton districts in Indiana to Rockford. It made other changes in its rates from those mines to stations near Rockford in northern Illinois in order to present a consistent rate adjustment and it joined other railroads in proposing increases in the joint rates applicable to the transportation of coal from other mines in other Indiana and Illinois mining districts to the same destinations.

The right of a railroad to initiate rates, provided those rates are not violative of any law, has been repeatedly affirmed by this Court. In *U. S.* v. *Illinois Central Railroad*, 263 U. S. 515 at page 522, we find:

> "A carrier is entitled to initiate rates and in this connection to adopt such policy of rate making as to it seems wise. *I. C. C.* v. *Chicago Great Western Railway Company*, 209 U. S. 108, 118-119; *Southern Pacific Company* v. *Interstate Commerce Commission*, 219 U. S. 433; *Interstate Commerce Commission* v. *L. & N. R. R. Co.*, 227 U. S. 88, 92."

See also *U. S.* v. *C. M. St. P. & P. R. Co.*, 294 U. S. 499, 506; *I. C. C.* v. *Columbus & Greenville Ry.*, 319 U. S. 551, 560.

A carrier has the undoubted right to so adjust its rates that it may meet competitive conditions and obtain or retain traffic for its own line. The only limitation on the carrier's right to so initiate rates is that such rates must not be in conflict with the provisions of the Interstate Commerce Act. In *Texas & Pacific Railway Company, et al.* v. *United States of America, et al.*, 289 U. S. 627, at 636, the Court said:

> "As the carriers are in competition for the business they may, within the zone of reasonableness, pre-

scribed by the statute, adjust their rates so as to obtain or retain the desired traffic for their own lines. *Interstate Commerce Commission* v. *Alabama Midland R. Co.*, 74 Fed. 715, 723-4; 168 U. S. 144, 172-3; *Skinner & Eddy Corp.* v. *United States*, 249 U. S. 557, 564; *United States* v. *Illinois C. R. Co.*, 263 U. S. 515, 522.

"The theory of the Act is that the carriers in initiating rates may adjust them to competitive conditions, and that such action does not amount to undue discrimination. *Texas & P. R. R. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197."

The rail carriers have long been in competition in the movement of coal from mines in Indiana, Illinois and Kentucky to Beloit, Wisconsin, and to Rockford, Illinois. In the past the rate structure has been such that the Milwaukee Road secured its proportion of this important traffic. The rates which it proposed and which the Commission here requires to be cancelled would continue in effect the long standing relationships between rates from mines on its railroad and rates from other origins on other railroads to the same destinations.

The Act clearly provides that the Commission can only require the cancellation of schedules proposing new rates when, after hearing, there is a finding supported by evidence that such proposed rates are unlawful.

The authority of the Commission to suspend or require the cancellation of rates is contained in Section 15 (7) of the Interstate Commerce Act, which provides in part as follows:

"Whenever there shall be filed with the Commission any schedule stating a new, individual or joint rate, * * * the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by

> the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate. * * *"

The language of Section 15 (7) leaves no doubt that the carrier has the right to initiate rates and that the Commission is without power to require their cancellation unless such rates, upon convincing evidence, are found to be unlawful, in other words, unless they are found to be in conflict with some provision of the Interstate Commerce Act. A clear statement of this rule is found in *Interstate Commerce Commission* v. *L. & N. Ry. Co.*, 227 U. S. 88, 92:

> "Under the statute the carrier retains the primary right to make rates, but if, after hearing, they are shown to be unreasonable, the Commission may set them aside and require the substitution of just for unjust charges. The Commission's right to act depends upon the existence of this fact, and if there was no evidence to show that the rates were unreasonable, there was no jurisdiction to make the order."

See also *Texas & Pacific Railroad Company* v. *United States*, 289 U. S. 627.

This issue was before the Court in *United States* v. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company*, 294 U. S. 499. At page 510, Mr. Justice Cardozo said:

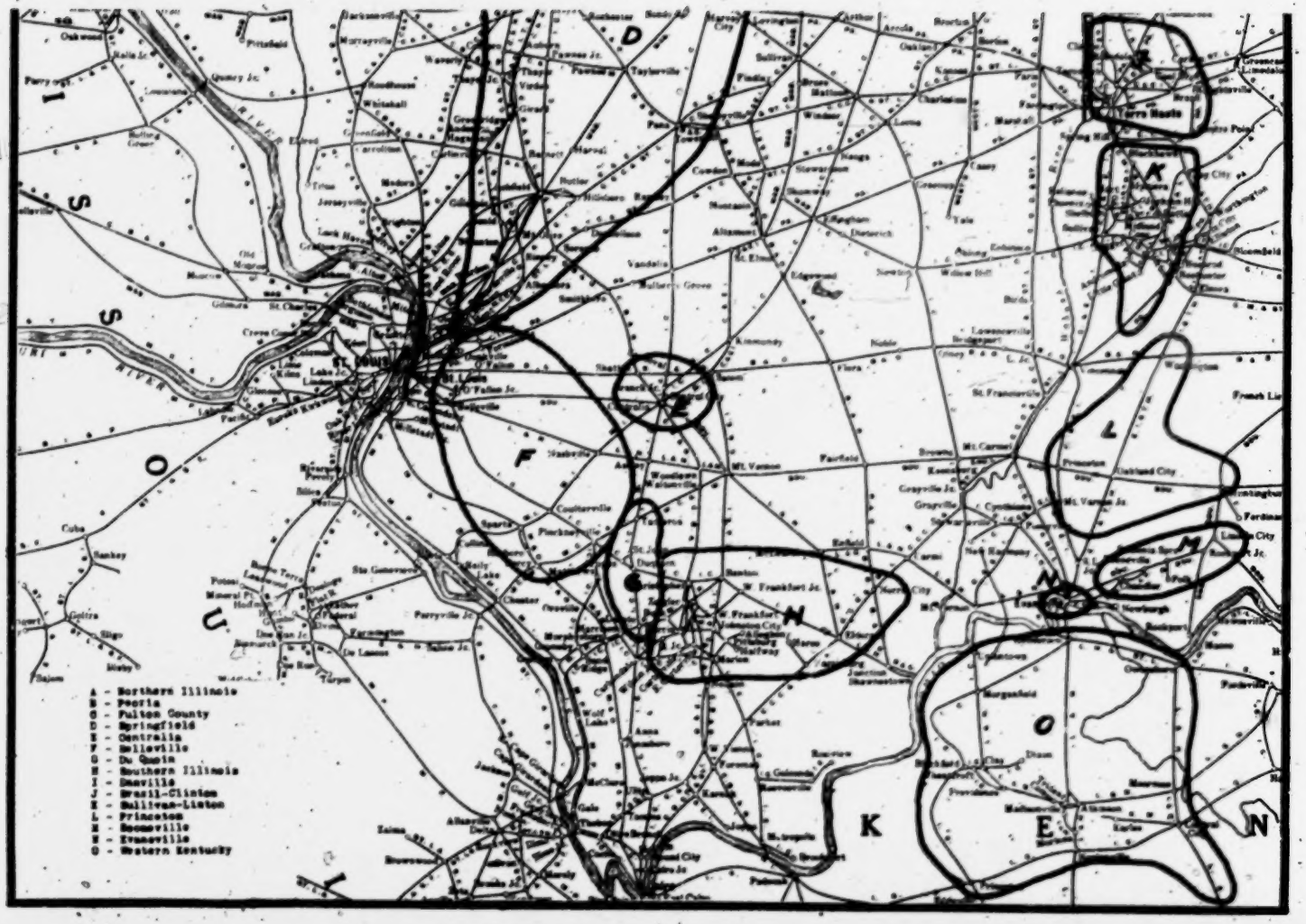
> "All that the Milwaukee has done is to initiate a schedule which must be upheld as lawful unless adequate reasons are presented for setting it aside. Cf. *Anchor Coal Co.* v. *United States*, 25 F. (2d) 462; *Atchison, T. & S. F. Ry. Co.* v. *United States*, 279 U. S. 768, 773."

The Commission exceeded its power and required the cancellation of proposed schedules without adequate and essential findings to support its order.

This Court has reiterated that an order of the Commission must be supported by basic and essential findings. It has held that the parties are entitled to know upon what facts and conclusions the Commission arrived at its decision. This is also necessary to enable the Court in reviewing an action of the Commission to pass intelligently upon the question of whether or not the Commission has acted within the power delegated to it by Congress.

In the absence of such findings, the Court is not "called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit. The Commission is the fact-finding body and the Court examines the evidence not to make findings for the Commission but to ascertain whether its findings are properly supported". This language is contained in *Florida* v. *United States*, 282 U. S. 194, 215. The failure of the Commission to make appropriate findings "leaves the parties in doubt as to a matter essential to the case and imposes unnecessary work upon the courts called upon to consider the validity of the order". *Beaumont, Sour Lake & Western Railway Company* v. *United States*, 282 U. S. 74, 86; *United States* v. *Carolina Freight Corp.*, 315 U. S. 475, 488-489; *I. C. C.* v. *Columbus & Greenville Ry.*, 319 U. S. 551, 560.

Mere perfunctory and formal findings, couched in the words of the statute, are not enough, and the Court on review looks beyond such findings and examines the entire report to determine whether or not the Commission has acted within the powers granted to it. In *Southern*


A - Northern Illinois
B - Peoria
C - Fulton County
D - Springfield
E - Centralia
F - Belleville
G - Du Quoin
H - Southern Illinois
I - Danville
J - Brasil-Clinton
K - Sullivan-Linton
L - Princeton
M - Boonville
N - Evansville
O - Western Kentucky

Pacific Co. v. *Interstate Commerce Commission*, 219 U. S. 443, 449, the Court said:

> "While it is true that the opinion of the Commission may contain some sentences which, when segregated from their context, may give some support to the contention that the order was based upon a consideration merely of the intrinsic unreasonableness of the rate which was condemned, we think when the opinion is considered as a whole in the light of the condition of the record to which we have referred, it clearly results that it was based upon the belief by the Commission that it had the right under the law to protect the lumber interests of the Willamette Valley * * *."

See *Anchor Coal Co.* v. *United States*, 25 F. (2d) 462, 464; *United States* v. *C. M. St. P. & P. R. Co.*, 294 U. S. 499, 510.

This Court has repeatedly said that mere recitals in the words of the statute that proposed rates were unreasonable, unjustly discriminatory, unduly preferential or prejudicial are not adequate findings of unlawfulness. See *Florida* v. *United States*, 282 U. S. 194, 215; *Beaumont, Sour Lake & Western Railway Company* v. *United States*, 282 U. S. 74, 86; *Norwegian Nitrogen Corporation* v. *United States*, 288 U. S. 294, 318.

Simple statements by the Commission that a rate is unreasonable, discriminatory or prejudicial is a mere conclusion or opinion of the Commission. The parties, as well as the Court, are entitled to know by what standards, and upon what facts, the conclusion was reached.

In the light of the foregoing, well established rules, we examine the report of the Commission to determine whether or not the order is supported by adequate findings, and to learn whether or not the Commission, in fact, acted within powers delegated by Congress.

On examination of the report, it will be found that

there "lurk in this report phrases or sentences suggestive" that the order was based upon a consideration of the unlawfulness of the proposed rates. A careful examination, however, makes it clear that the Commission mistakenly believed that it could arbitrarily adjust rates. It made the error which was so expertly condemned by Mr. Justice Cardozo when he spoke for the Court in reviewing an order of the Commission concerning the lawfulness of rates proposed for the transportation of coal by this same railroad between some of the identical points. *United States* v. *C. M. St. P. & P. R. R. Co.*, 294 U. S. 499, *supra*.

Only four sections of the Interstate Commerce Act prescribe standards of conduct to guide the carrier in the publication of freight rates. Section 1 requires that the rates be reasonable. Section 2 prohibits discrimination. Section 3 makes it unlawful for a carrier to cause undue preference or advantage to any person, firm, etc., or to subject any person or firm to any undue prejudice or disadvantage. Section 4 contains the long and short haul provisions.

An analysis of the Commission's report discloses that there is no finding that the present or proposed rates of the Milwaukee, which apply to coal from mines on its railroad in Indiana to Rockford, Illinois, are unreasonable or that they are otherwise unlawful. Neither is there such a finding concerning its rates from the same mines to Beloit, Wisconsin. There is, however, an abundance of support in the report to sustain the conclusion that the rates are not unreasonable and, instead, that they fall within the "zone of reasonableness" which, by frequently repeated definition, lies in that area between an unduly high rate and one which may be so low as to fail to compensate the carrier for its service. Unduly low rates have been previously condemned by the Commission on the ground that the money lost on the low rated traffic must be recouped by

the carrier by making a higher charge on another type of traffic. In the absence of a finding that the condemned rates were not compensatory or a finding that they were so low that they cast a burden upon other traffic "there was, therefore, no basis for an order fixing minimum reasonable rates under Section 15 (1) of the Act." *Texas and Pacific Railway* v. *United States*, 289 U. S. 627, 633.

There, of course, is no suggestion by anyone that the condemned rates violate Section 4 of the Act. The recitals in the Commission's "conclusions" which apparently contain the Commission's ultimate findings condemn the Milwaukee rates as being unjustly discriminatory in violation of Section 2 of the Act, and as unduly preferential and prejudicial as between origins in the Brazil and Linton districts, and between the respective Indiana districts, and between the Indiana districts on the one hand and the Illinois districts on the other, in violation of Section 3 (1) of the Act. (Conclusions 1 and 2, R. 210.) An analysis of these conclusions will clearly demonstrate that while there is a recital, practically in the words of the statute, that the condemned rates violate Sections 2 and 3 of the Interstate Commerce Act, these recitals are not supported by any essential or adequate findings and the real reasons for the condemnation of the rates and the order requiring their cancellation are to be found in other recitals in the report indicating that the action of the Commission was wholly arbitrary and based on the assumption of power found nowhere in the Act.

Section 2 of the Interstate Commerce Act prohibits a carrier's charging any person a greater or lesser compensation for any service rendered than it charges any other person for doing a like or contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions.

There are many all rail routes from mines in all of the Indiana and Illinois groups to Rockford and Beloit in which the Milwaukee does not participate but, apparently, it was the conclusion of the Commission that the publication of a single line rate, applicable only via the lines of the Milwaukee from mines on its railroad in Indiana to destinations in northern Illinois and Beloit, Wisconsin, on a basis different from those rates in which the Milwaukee joined other railroads in moving coal from mines on other railroads to the same destinations, resulted in discrimination.

The only possible suggestion in the Report or Findings that the transportation from mines on the Milwaukee over its single lines to the destinations and the transportation from other mines over other routes, in which the Milwaukee joined, was "under substantially similar circumstances and conditions", is the recital that the average distances over the single line routes of the Milwaukee are approximately the same as, and in some instances less than, those over the joint line routes. The unsoundness of charging the Milwaukee Railroad with discrimination in these circumstances, where it controls only the rates over its own line and can only publish rates via joint routes which are agreed to by the participating carriers, is clear, but it is emphasized by the fact that in another part of the Report, the Milwaukee is required by findings and order of the Commission to join in rates with other railroads serving the Springfield, Illinois district and to the same destinations which are lower by 12¢ per ton than those required by the Commission to be applied from mines in Indiana to the same destinations and for much longer average hauls.

Section 3 (1) of the Interstate Commerce Act recites that it shall be unlawful for any common carrier to make, give or cause any undue or unreasonable preference or advantage to any particular person, company, firm, etc., or to subject any particular person, company, firm, etc.,

to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

The Commission's recital in the words of the Statute that the condemned rates result or would result in undue preference or prejudice is not supported or explained anywhere in the Report, except for the statement found on page 214 of the Report wherein it is said (R. 206):

> "Although only 4 of the 30 origins in the Brazil district and only about 9 of the 31 origins in the Linton district are served by the Milwaukee, in a recent representative period, of the total Brazil and Linton tonnage moved to Rockford, a representative destination, 95.4 percent from Brazil and 78.5 percent from Linton moved under the single-line rates of the Milwaukee. There is a movement from Brazil and Linton mines served by respondents other than the Milwaukee and the Illinois Central to these destinations, but it is relatively small. In general, all of the mines in these districts produce coal of the same quality and grade, and a difference of a few cents per ton in the transportation charge is normally sufficient to divert a coal contract from one mine to another."

It is true that the Milwaukee moves the greater part of the coal originating in the Brazil and Linton districts to Rockford. It is also true that during the period mentioned in the report, the rates on this coal were lower than the rates which applied from other mines in the same groups over other routes. Nevertheless, the Milwaukee offered to show in its petition for reopening and rehearing, which petition was denied, that during the period prior to 1934, and at the time when the rates from all mines on all railroads in the Brazil and Linton districts to Rockford, were on the identical level that the Milwaukee handled from 60 to 99.07 percent of all the tonnage moving to that destination from those districts. In refusing to reopen the case, the Commission denied the Milwaukee an opportunity

to explain the only statement which the report contains that can possibly be construed as supporting the finding that the condemned rates violated Section 3. Attention is respectfully directed to *United States* v. *C. M. St. P. & P. R. Co.*, 294 U. S. 499, at page 503, where the Court said referring to railroads other than the Milwaukee:

> "They compete also to a slight extent for the carriage of coal from the Brazil and Linton groups, though the testimony is that their traffic from those points is only 1% or less as compared with 99% belonging to the Milwaukee."

The Court there referred to a period when the rates from the Brazil and Linton groups via all routes were on the same level, and before the Milwaukee had reduced its rates to restore the relationship with competing mines in Illinois. There are no adequate recitals of facts or findings to support any conclusion that the condemned rates violate Section 3 (1) of the Act.

The Report of the Commission discloses the real reason for the condemnation of the rates and clearly demonstrates the Commission's misconception of its power.

The Commission writes a "long and discursive narrative"* and concludes with certain recitals that the condemned rates are unlawful in respects heretofore referred to, but these recitals are without supporting findings and were thrown in as some justification for the order. They also serve as an attempt to distinguish this case from the one already passed on by the Supreme Court in *United States* v. *C. M. St. P. & P. R. Co.*, 294 U. S. 499, *supra.*

* Justice Cardozo so characterized the Report of the Commission of 14 pages in the proceeding, reviewed by the Court in 294 U. S. 499, 505. Here the Commission requires 41 pages exclusive of 7 pages of appendices to reach the same conclusion but still does not meet the vital objection that "the Commission does not hold that the existing rate relation is intrinsically sound and fair".

The real consideration for the Commission's conclusions, however, and the underlying reason for the condemnation of the Milwaukee rates and the requirement in the order that they be increased 27¢ per ton to northern Illinois and 12¢ per ton to Beloit, Wisconsin, are found on pages 200 and 201 of the Report in these words: (R. 190.)

> "In considering the level of the rates from the respective Indiana and Illinois groups to these destinations, as well as to Beloit, it must be borne in mind that the differential between Linton and Princeton, the two most important Indiana groups, is only 7 cents for an average difference in distance to these 12 destinations of 65 miles (73 miles from the combined Princeton and Boonville groups). That differential is on a lower level than any other between important groups in this midwestern adjustment. Since it is of long standing, is in effect generally throughout the Northwest, and is not here sought to be changed, we do not feel warranted in approving its disturbance. That low differential necessarily reflects itself in relatively higher rates from the nearer Indiana groups, as well as relatively lower rates from the more distant Indiana group or groups, than might otherwise be warranted."

In other words, the Commission felt that it was authorized under the law to treat all of the Indiana districts as one huge mining group, and that it had the right under the law to inflate the rates applicable from the mines in the groups nearest the destination territory in order that those groups more distant from the destination territory might be accorded rates lower than would otherwise be justified. The Commission believes that it can compel receivers of coal mined on the Milwaukee Railroad in Indiana to pay rates higher than are warranted by distance and other transportation conditions, in order that coal mined in the Princeton and Boonville groups, located on other railroads, may be accorded rates lower than are

warranted by the distance and transportation conditions applicable to the movement of that coal.

The Commission recites in the paragraph quoted above that the relationship in the rates between the Indiana mines is one of long standing and that it is not sought in this proceeding to change that relationship. This statement is entirely inaccurate. The relationship in the rates between the Indiana mines for which the Milwaukee here seeks approval is a relationship which has existed since 1934. The proposed rates would also preserve the existing relationship between the rates applicable from Indiana and those applicable from Illinois. The Commission discusses the relationship in the rates between the Indiana groups which existed prior to 1934 and which, by this report and order, the Commission attempts to restore. The Commission has simply condemned rates which it says will disrupt existing relationships though the lawfulness of the relationship, said to be disrupted, is not passed upon. In doing this, the Commission attempts to repeat the act which this Court condemned in *United States* v. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company*, 294 U. S. 499, 509. In that case, the Court said:

> "The Commission does not hold that the existing rate relation is intrinsically sound and fair. • • • The point of the decision is not that present rates are sound, but that they must be maintained, even if unsound, for fear of a rate war which might spread beyond control."

and further at page 510:

> "The reproach of piecemeal action is incurred by the Commission, which has not adjudged the fairness of the relation now subsisting between Illinois and Indiana rates, which has not questioned its own capacity to prevent unjust reprisals, which has put off to an indefinite future the remodeling of the rate structure for all the carriers affected, and which has left this particular carrier helpless in the interval.

> In brief, a schedule of lowered tariffs has been canceled though the facts that control the validity of the reduction have yet to be determined. This was not a full discharge by the Commission of an immediate responsibility. It was inaction and postponement. Responsibility was shifted from the shoulders of the present to the shoulders of the days to come."

So here, without finding that the relationship approved between the rates from the various origins in Indiana to the destination territory is lawful or "intrinsically sound and fair", the Commission condemns rates proposed by the Milwaukee. It says that such rates would disturb the relationship. The Commission's own recital indicates its doubt as to the lawfulness of the differential relationship between the Indiana groups. It was, therefore, clearly the Commission's duty, not only to determine the lawfulness of the differential relationship but also to implement such determination by adequate findings supported by evidence before condemning the Milwaukee Railroad's rates simply because such rates failed to conform. The Commission recites in the quoted paragraph that the differential between Linton and Princeton groups is only 7 cents for an average distance of 65 miles, and the apprehension with reference to the lawfulness of this differential is readily understandable when a comparison is made in the relationship between the rates from the mines in the Indiana groups with the relationship between the rates from the mines in the Illinois groups.

To illustrate, for a difference in distance of 106 miles to Rockford from mines in the Springfield, Illinois group less than from the mines in the Southern Illinois group, the Commission here approves a difference in rates of 30¢; while, for a difference in distance of 124 miles to Rockford from the mines in the Brazil district less than from the mines in the Princeton district, the Commission approves a difference in rates of 17¢. These are the Commission's

own figures taken from page 223 of the Report and explain why the Commission believed it should require the Brazil district shipper to pay more for the transportation of coal to Rockford and for less service, than the shipper located in the Springfield, Illinois group when he shipped his coal to Rockford. (R. 216.).

Of the Indiana groups the Brazil district is the coal mining group nearest destination and, in the opinion of the Commission, shippers located there must be penalized in order to justify the approved rates from mines in the more distant Princeton, Indiana group. The Milwaukee insists that mines on its railroad are entitled to the advantages of their geographical location and that rates therefrom should reflect the transportation conditions from that area and not be inflated in order to continue in effect some relationship in rates, the lawfulness of which is not passed upon.

III.

The Rates of a Carrier Can be Condemned as Discriminatory, Prejudicial or Preferential, Within the Meaning of the Act, Only When the Carrier Has it Within Its Power to Remove the Wrong.

We have heretofore pointed out the failure of the Commission to support its order with adequate findings and we here desire to demonstrate that even though the Commission had made the essential findings the order would be void. The rates of the Milwaukee are condemned as violating Sections 2 and 3 (1) of the Act, and those sections only. It would seem to be elementary that a railroad could not be charged with discrimination unless it had effective means of removing the discrimination. (*Central Railroad Company of New Jersey* v. *U. S.*, 257 U. S. 247, 259.) It is certainly contrary to accepted conceptions of

fairness that anyone can be charged with a wrong unless it is his conduct which causes the injury.

Here are the facts from which the Commission concludes the Milwaukee may be charged with the violation of Sections 2 and 3 (1) of the Act. The Milwaukee has a single line railroad from mines in the Brazil and Linton, Indiana districts to destinations on its line in northern Illinois and Beloit, Wisconsin. The principal destination in northern Illinois is Rockford, and both Rockford and Beloit use large quantities of industrial fuel. Both cities are served by other railroads which join in rates for the movement of coal from all Indiana, Illinois and western Kentucky origin mining groups. The Milwaukee Railroad insists that it has the right and the duty to establish rates over which it has control from mines on its railroad in the Indiana groups to the destinations in northern Illinois, and Beloit, Wisconsin which will permit it to move coal in competition with other railroads and which will permit the mine operators on its railroad to compete in the sale of coal with operators on other railroads in the Indiana and Illinois coal fields. The Milwaukee proposes to maintain rates over its single line which will continue a relationship with rates applicable from origins in Illinois, existing with unimportant interruptions since 1910, and a relationship which experience has proved necessary if mine operators on the Milwaukee are to compete with others in the sale of coal in this destination territory and if the Milwaukee is to participate in the handling of the traffic which produces essential revenue.

It is not even suggested in support of the Commission's recital that the condemned rates violate Sections 2 and 3 (1) of the Interstate Commerce Act, that the Milwaukee has any control over the rates from the points said to be discriminated against. The Commission recites no facts

to support this conclusion because there are no such facts. Clearly, the Milwaukee has no control over the rates from any mine in Illinois to Rockford, Beloit, or any other destination here involved. The Milwaukee serves no mines in Illinois. The rates for the movement of coal to all of these destinations are prescribed by a regulatory body and are not rates which the Milwaukee voluntarily establishes. Likewise, with respect to rates from mines in Indiana located on other railroads, the Milwaukee does not control such rates and, if the Milwaukee were permitted to withdraw from its participation in joint rates from such mines in Indiana and also from mines in Illinois to Rockford and Beloit, no shipper or receiver would be in any way benefited, as such action would not remove the so-called discrimination resulting from simple differences in rates. There would still be the same disparity in the rates between those applicable over the Milwaukee's single line and those applicable to the same destinations over the joint lines of other railroads which the Milwaukee could not remedy, and for which it could not be held responsible.

The identical factual situation was presented in *Texas & Pacific Railway Company* v. *United States*, 289 U. S. 627. In that case, it appears that the Texas & Pacific Railway operated across Texas and reached New Orleans and, while not reaching any of the Texas ports, it joined in rates with railroads for joint rates to those ports. While it appeared from these facts that the Texas & Pacific could control the rate to New Orleans, it had no effective control over the rates to the Texas ports. In discussing the error of the Commission, in its charge that the Texas & Pacific had violated Section 3 of the Act, the Court said on pages 648-650:

> "The classical case of discrimination in rates is presented where a single carrier serving two points approximately equidistant from a common origin on the carrier's line, exacts unequal rates for the two

hauls. Not only is the prejudice obvious, but equally so the ability of the carrier to abate it by raising the rates to the point enjoying the lower rates, or decreasing those to the point subject to the higher charge. The principle comprehends, as well, instances of joint rates where the same carriers participate in the rates to both points, and where the originating (or delivering) carriers are different, but the delivering (or originating) carriers are the same. So, too, a carrier may be responsible for preference or prejudice where it participates in one of several through routes between point of origin and the prejudiced destinations, although its own line may reach only one or neither of the latter, *St. Louis S. W. Ry.* v. *United States*, 245 U. S. 136, for the discrimination is brought about by the disparity of rates, and the order requiring its abatement necessarily runs against all the carriers parties to them. If one or more of the railroads whose lines make up the through route should refuse, upon an order to equalize rates, to afford one of the others a proper division of the rate, the latter may obtain redress from the Commission under § 15 (6). Where, however, a carrier whose lines reach, or which controls the rate to, one of the destinations, is a party to a joint rate to the other but cannot make or control the latter rate, or though it were to withdraw as a party thereto, or to cancel the rate, the discrimination would still continue—it cannot be held responsible, nor can any order to remove the prejudice run against it.

"This rule has been consistently applied in respect of export and import rates to the ports. The reason for the doctrine is that preference or prejudice can be found only by a comparison of two rates. If these are the rate of one carrier to Point A and that of another to point B while a relationship of one to the other may be determined neither the first nor the second carrier alone can be held to have created the relation. Assuming that neither rate is unreasonable, the one carrier cannot be compelled to alter its rate, because the

other's is higher or lower for the same service. A carrier or group of carriers must be the common source of the discrimination—must effectively participate in both rates, if an order for correction of the disparity is to run against it or them."

Even though the Milwaukee controlled both the higher and lower rates the Commission could only require a removal of discrimination by affording the railroad an alternative.

While we have demonstrated, we believe, that the Milwaukee had no effective control over any rates other than the single-line rate from its mining origins in Indiana to the destination involved, the law is clear that a railroad charged with a discrimination must be afforded an opportunity to remove the discrimination by altering the rates. The clearest expression of the rule is that found in *Texas & Pacific Railway* v. *United States*, 289 U. S. 627, where it is said at page 650:

> "Where an order is made under § 3 an alternative must be afforded. The offender or offenders may abate the discrimination by raising one rate, lowering the other, or altering both. Compare *American Express Co.* v. *Caldwell*, 244 U. S. 617, 624; *United States* v. *Penna R. Co.*, 266 U. S. 191; *Chicago, I. & L. Ry. Co.* v. *United States*, 270 U. S. 287, 292; *Minneapolis & St. L. R. Co.* v. *Peoria & Pekin U. R. Co.*, 270 U. S. 580, 582. The situation must be such that the carrier or carriers if given an option have an actual alternative.
>
> "The principle has been approved in decisions of this court with respect to practices, *Interstate Commerce Comm'n* v. *Diffenbaugh*, 222 U. S. 42; *Central Railroad of New Jersey* v. *United States*, 257 U. S. 247, and rates, *East Tenn. V. & G. Ry. Co.* v. *Interstate Commerce Comm'n*, 181 U. S. 1; *Penn Refining Co.* v. *Western N. Y. & P. R. Co.*, 208 U. S. 208, 221."

IV.

The Commission's Comparison of Average Rates and Distances From Each Origin Group to 12 Destinations Offers No Support For Its Order.

On page 226, (R. 220) the Commission sets out Appendix D, which is discussed on pages 198 (R. 187) and following of the Report. This appendix compares average rates and distances from the various origin mining groups to 12 destinations in northern Illinois. This is apparently offered in some justification of the Commission's order requiring higher rates from the Brazil district than from the Springfield district, for it shows that by averaging the distances to the 12 destinations one arrives at what appears to be longer average hauls from Brazil than from Springfield. Such comparisons are valueless and can have no weight as evidence. Rockford is the important city, consuming large quantities of industrial fuel and the market which producers of coal seek to reach. To average the distances between mines in the Brazil group and Rockford with the distances from mines in the Brazil group to some more distant point which consumes little coal, in order to arrive at a fair rate to the two stations is arbitrary and obviously unfair. Such a rate would prohibit the movement of coal from Brazil mines to Rockford, because it would be too high, and no coal could be moved to the more distant points even though the rate were low for there is no coal consumed there.

The discussion of the Commission in this regard simply confuses the real issues which are the lawfulness of rates to Rockford and their relation to the rates to Beloit. The proceeding was instituted by the Commission as the result of carrier efforts to make necessary adjustments in the rates as between Rockford and Beloit, to comply with the

Commission's order in *Fairbanks-Morse & Company, et al.* v. *Alton & Southern R. R., et al.*, 251 I. C. C. 181. These are both important industrial cities. The Milwaukee Railroad has the right to publish competitive rates to these important markets and to have the lawfulness of the rates tested by distance and service to those cities and to not have the rates condemned because of some wholly theoretical average of distances. The Commission's Report (R. 216) shows that the distance to both Rockford and Beloit from all mines in the Brazil, Indiana group is less than from the mines in the Springfield group.

V.

The Commission's Report.

Although the Record is extensive and voluminous, the issues presented in the proceeding before the Commission were relatively simple. The Report, however, is long, obscure and vague. Anyone reading and studying the Report reaches the inevitable conclusion that the Commission was uncertain about its reasons for the decision and was vainly seeking support for a result it believed to be just. There is no simple and clear statement of the facts from which the Commission reached its decision and the examination of which would make it possible for the Court to say whether the decision was right or wrong.

The following statement from the Report is found on page 192 of the Record:

> "To Beloit, • • • the rates • • • from Brazil and Linton mines on the Milwaukee are not here proposed to be changed and, therefore, are not specifically in issue in this proceeding".

This was obviously a correct statement. The rates to Beloit via the Milwaukee single line were not only "not

specifically in issue" they were not in issue in any respect under the order of investigation. In the face of this recital that such rates were not in issue, the Commission proceeded to require by its Order that the Milwaukee increase the rates not in issue by 12¢ per ton.

This Report best illustrates the type of report which the Court has repeatedly condemned, *Beaumont, S. L. & W. Ry. Co.* v. *U. S.*, 282 U. S. 74, 86.

Mr. Justice Cardozo said in *U. S.* v. *C. M. St. P. & P. R. R. Co.*, 294 U. S. 499, 511:

> "We must know what a decision means before the duty becomes ours to say whether it is right or wrong",

and in *I. C. C.* v. *Columbus & Greenville*, 319 U. S. 551, 560 ,in speaking of another of the Commission's Reports, Mr. Justice Douglas said:

> "The questions left unanswered by this report may be simple ones to experts. But we should have those answers before we put the imprimatur of this Court on the Commission's order",

and in *Colorado-Wyoming Gas Co.* v. *Federal Power Commission*, 324 U. S. 627, decided April 2, 1945, where there was before the Court a review of an order of the Federal Power Commission, Mr. Justice Douglas speaking for the Court said on page 634:

> "• • • we must first know what the 'finding' is before we can give it that conclusive weight. We have repeatedly emphasized the need for clarity and completeness in the basic or essential findings on which administrative orders rest. *Florida* v. *United States*, 282 U. S. 194, 215, 75 L. ed. 291, 304, 51 S. Ct. 119; *United States* v. *Baltimore & O. R. Co.*, 293 U. S. 454, 464, 79 L. ed. 587, 594, 55 S. Ct. 268; *United States* v. *Chicago, M. St. P. & P. R. Co.*, 294 U. S. 499, 504, 505, 510, 511, 79 L. ed. 1023, 1028, 1029, 1031,

1032, 55 S. Ct. 462; *United States* v. *Carolina Freight Carriers Corp.*, 315 U. S. 475, 488, 489, 86 L. ed. 971, 982, 62 S. Ct. 722. Their absence can only clog the administrative function and add to the delays in rate-making."

Conclusion.

It is clear from an examination of the Commission's Report that it misconceived its jurisdiction and has attempted to exercise power not delegated by Congress. It has attempted to deny the Milwaukee Railroad the right to adjust its rates so that it can continue to compete fairly in the transportation of coal to important consuming markets, and required the cancellation of rates, not because they are in violation of some provision of the Act, but because in the opinion of the Commission the rates from Milwaukee mines should be inflated in order to permit mines located in more distant groups to be accorded lower rates than would otherwise be warranted.

J. E. Goggin,
William L. Hunter,
Carson L. Taylor,
Attorneys for Railroad Appellant.

A. N. Whitlock,
M. L. Bluhm,
Of Counsel.

March —, 1947.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. 467

AYRSHIRE COLLIERIES CORPORATION, ET AL.,
Appellants,

vs.

UNITED STATES OF AMERICA, ET AL.,
Appellees.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY,
Appellant,

vs.

UNITED STATES OF AMERICA, ET AL.,
Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA.

REPLY BRIEF FOR AYRSHIRE COLLIERIES CORPORATION, ET AL., APPELLANTS.

EARL B. WILKINSON,
ARTHUR R. HALL,
Attorneys for Ayrshire Collieries Corporation, et al., Appellants.

SAMUEL W. WITWER, JR.,
J. ALFRED MORAN,
Of Counsel.

INDEX.

	PAGE
Preliminary statement	1
Argument	9
I. The decision in United States v. Chicago, Milwaukee, St. Paul & Pacific Railroad Company	9
II. The jurisdiction of the Commission to enter its order in I. & S. Docket No. 5139	11
A. Respecting the existing rates and rate relationships	11
B. Respecting the rates to Beloit via the Southern Railway from Princeton and Boonville and via the single-line of the Milwaukee from Brazil and Linton	20
III. The Commission's conclusion that the present and proposed rates from Indiana are unlawful in violation of Sections 2 and 3 (1) of the Act	21
IV. The Commission's order to remove discrimination and prejudice and preference is invalid because of the lack of effective control by the Milwaukee over the joint-line rates	30
V. The approved rates and rate relationships	35
VI. The determination by only two members of a statutory three-judge District Court	40
Conclusion	43

CITATIONS.

Cases.

Advances in Rates—Western Case, 20 I. C. C. 307, 314 ..... 14, 15

Akron, C. & Y. Ry. Co. v. United States, 22 Fed. (2d) 199, 203 14

Coal to Illinois and Wisconsin, 232 I. C. C. 151..... 5

Cumberland Telephone & Telegraph Co. v. Louisiana Public Service Commission, 260 U. S. 212, 218.....41, 42

Eastern Salt Cases, 122 I. C. C. 21 14

Fairbanks-Morse & Co. v. Alton & S. R., 195 I. C. C. 365 38

Interstate Commerce Commission v. Inland Waterways Corporation, 319 U. S. 671, 689 19

Lignite Coal from North Dakota, 126 I. C. C. 243, 244, 245 ..... 14, 15

Naval Stores from Southern Producing Points to Various Destinations, 87 I. C. C. 740, 756; 89 I. C. C. 634 14

Oregon-Washington R. & Nav. Co. v. United States, 47 Fed. (2d) 250 42

Sioux City Terminal Railway Switching, 241 I. C. C. 53, 73, 74 ..... 14, 16

State of Ohio, et al. v. United States, 6 Fed. Supp. 386. 42

Texas & Pacific Ry. Co. v. United States, 289 U. S. 627, 646, 649, 650 ..... 30, 31, 32, 33

United States v. Chicago Heights Trucking Co., 310 U. S. 344 29

United States v. Chicago, Milwaukee, St. Paul & Pacific R. Co., 294 U. S. 499, 504, 509 ..... 9, 11, 12

Virginian Railway Co. v. United States, 272 U. S. 658, 671, 672 42

Western Paper Makers' Chemical Co. v. Director General, 91 I. C. C. 223, 236 14

Western Paper Makers' Chemical Company v. United States, 271 U. S. 268 13

Youngstown Sheet & Tube Co. v. United States, 295 U. S. 476 ..... 31, 32

Statutes.

Urgent Deficiencies Act of Oct. 22, 1913, c. 32, 38 Stat. 208, 220 (U. S. C., Title 28, Sec. 47) 40, 41

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. 467

AYRSHIRE COLLIERIES CORPORATION, ET AL.,
Appellants,

vs.

UNITED STATES OF AMERICA, ET AL.,
Appellees.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY,
Appellant,

vs.

UNITED STATES OF AMERICA, ET AL.,
Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA.

REPLY BRIEF FOR AYRSHIRE COLLIERIES CORPORATION, ET AL., APPELLANTS.

PRELIMINARY STATEMENT.

The briefs of the appellees, particularly the brief of intervening railroads and Illinois coal operators, The Alton Railroad (Henry A. Gardner, Trustee), et al., Central

Illinois Coal Traffic Bureau and Illinois Coal Traffic Bureau, hereinafter occasionally referred to as "interveners" to distinguish them from the other appellees, the United States and the Interstate Commerce Commission, are largely premised on two fallacies. Throughout their briefs it is stated that by its order of July 9, 1945, in I. & S. Docket No. 5139 the Commission prescribed certain rates to be applied from Indiana mines to Beloit, Wisconsin, Rockford and other destinations in Illinois.

For the convenience of the Court, and to refute the repeated erroneous statements of appellees, we here submit a complete copy of that order (R. 222):

> *"It appearing,* That by order dated July 30, 1942, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order and suspended the operation of all of said schedules until March 2, 1943, and that subsequently respondents have voluntarily postponed the effective date of all of said schedules pending the disposition of this proceeding:
>
> *"It further appearing,* That a full investigation of the matters and things involved has been made; that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof; and that in said report the Commission has found (1) that the said suspended schedules have not been justified because certain of the proposed rates on bituminous coal from Indiana and Western Kentucky rate groups to points in northern Illinois and to Beloit, Wis., would be unreasonable, unjustly discriminatory, or unduly prejudicial or preferential, as indicated in said report; and (2) that certain of the present rates on bituminous coal from Indiana and western Kentucky rate groups to points in northern Illinois are unjustly discriminatory and unduly prejudicial and preferential in and to the extent indicated in said report.

"*It is ordered*, That the respondents herein be, and they are hereby, notified and required to cancel the proposed schedules in this docket on or before November 16, 1945, upon notice to this Commission and to the general public by not less than one day's filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, without prejudice to the establishment of rates on the bases approved in the said report.

"*It is further ordered*, That the said respondents, according as they participate in the transportation, be, and they are hereby, notified and required, on or before November 16, 1945, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, (1) to cease and desist from practicing the unjust discrimination under section 2 of the Interstate Commerce Act and the undue prejudice and preference under section 3 (1) of said act, found in said report to exist, and (2) to publish, maintain, and apply rates and charges which will avoid and remove the said unjust discrimination and undue prejudice and preference.

"*And it is further ordered*, That this order shall continue in force until the further order of the Commission."

Clearly, the foregoing order does not require any specific rate to be published or maintained by any carrier. When read in conjunction with Conclusion No. 1 of the Commission's report (R. 210), the order requires certain relationships in rates from Indiana mines to be maintained, but requiring a relationship in rates to be maintained is not the prescription of a specific rate which the carriers must publish and charge. The relationship of 10 cents per ton Linton over Brazil at Rockford, Illinois, for example, can be maintained whether the Brazil rate is $1.00 or $1.50 per ton.

The further fallacy and impropriety running through

the briefs of appellees are the quotations from the briefs of these appellants before the Commission, in lieu of references to the printed record for the evidence which they contend supports the report and order of the Commission.

The hearing before the Commission covered two proceedings. The issues in those proceedings were different. The report and order in only one of those proceedings is before this Court, namely, I. & S. Docket No. 5139. The order in the other proceeding, Docket No. 28881, is not before this Court. In the latter case the issue was whether the intrastate rates on coal within Illinois to Rockford and other destinations in northern Illinois discriminated against interstate traffic in coal.

These appellants believe and urged the Commission to find that the Illinois intrastate rates on coal shipped to Rockford and the other Illinois destinations discriminated against the interstate rates and shipments of coal from Indiana to those destinations. We introduced substantial evidence to demonstrate that fact. We took the position and argued in our briefs that the Commission could dispose of the case properly by requiring the Illinois rates to be increased under the 13th Section proceeding, Docket No. 28881, and by denying the proposed increases in rates from Indiana in I. & S. Docket No. 5139. Surely the argument of these appellants before the Commission, based upon the issues before the Commission in a case not before this Court, cannot with propriety be used here as a substitute for the evidence necessary to support the order of the Commission here under review.

The impropriety of appellees' attempt to impose an "estoppel by brief" against these appellants is further manifested by the fact that the Commission in its report ignored the evidence submitted by these appellants and

completely rejected the arguments in our briefs. The report shows that Docket No. 28881 was decided on the basis that the Illinois intrastate rates discriminated against the interstate rates from Illinois to Wisconsin and Iowa destinations. Further, not only did the Commission reject the evidence and arguments of these appellants, it rejected its own decision, promulgated six years earlier, involving the identical origins and destinations, where it approved rates from Indiana and Illinois on the basis urged by these appellants in the cases just before the Commission. We refer to the case of *Coal to Illinois and Wisconsin*, I. & S. Docket No. 4368, reported in 232 I. C. C. 151.

The few references to the printed record made by appellees are also apt to be misleading. For example, at pages 50 and 51 of their brief, the Illinois railroad and producer interveners quote a part of the testimony of Witness Kuhls, appearing for the Milwaukee Railroad, to the effect that the other roads in Indiana would have to have the same rates as the Milwaukee if they wanted to move coal to these competitive markets. The complete testimony of the witness on that subject, as it appears at pages 540-542 of the record, is as follows:

> "Q. After the 13th Section case, 23130 was decided, and nothing was done by the Interstate Commerce Commission with respect to the rates to Rockford and Freeport, your line, the Milwaukee, reduced its rate from Brazil-Clinton and Linton-Sullivan to Rockford and Freeport, did it not?
>
> * * * * * *
>
> "The Witness: Yes, we reduced our rates from the two Northern Indiana Groups the same amount as Illinois rates were reduced by order of the Illinois Commerce Commission, 17 cents a ton.
>
> * * * * * *

"Q. And that restored the relationship, so far as your road was concerned, to those destinations, Rockford, Freeport and the others involved as between your Indiana mines and the Illinois groups, did it not?

"A. That is right.

"Q. And was the purpose of that change, Mr. Kuhls, to enable your road to continue to compete for the traffic and the movement of coal from the mines you served in Indiana to those destinations?

"A. Yes, that was our contention.

"Q. You did not contend in the docket there involved that the rates were unduly high and should be reduced, and that the then $1.87 rate, or $1.70 rate which you proposed and put into effect, was necessary in order to reduce your rate to a reasonable maximum rate?

"A. No, we didn't think our rates were higher than the reasonable maximum.

"Q. As a matter of fact, it was the position of the Milwaukee Railroad in that proceeding, was it not, that all of the rates in Illinois and Indiana were too low?

"A. Yes, that was the evidence shown in Docket 23130.

"Q. But was it your opinion then and is it your opinion now that if you are going to transport coal from the mines served by you in Indiana to the Rockford, Freeport and other destinations that it is necessary for you to have the same relationship with Illinois that you enjoyed prior to the disruption by the Illinois reduction in rates?

"A. That is our opinion.

"Q. Now, is there anything peculiar in the service of the Milwaukee that makes it necessary for you to have that relationship that does not apply to the other carriers serving the Brazil-Clinton and Linton-Sullivan Groups in Indiana?

"A. Well, in our court case we showed that we were a single-line railroad from the origins to the destinations and that our mines were located at a lesser distance than the mines on the other railroads.

"Q. Yes, but leaving aside that factor, and I am thinking only of the ability to move freight, whether it is a few miles more or less, the other roads in Indiana, if they are going to move coal in a competitive market must have the same rates as you have, must they not, from the Brazil-Clinton Field?

"A. I think that is axiomatic.

"Q. Now, from your long experience as a traffic manager, coal traffic manager, Mr. Kuhls, and leaving out these items of transportation conditions and statistical research, is there any reason why the Brazil-Clinton Group as a whole, with approximately the same distance to Rockford as Springfield has, four miles less than Springfield, should have a rate 17 cents higher than the rate from the Springfield or Central Illinois Group to Rockford?

"A. Well, there are some things that enter into it which, of course, may not be pertinent; but the other mines may not need these markets to the same extent that the mines on the Milwaukee Railroad do.

• • • • •

"Q. In other words, if they don't need the market and don't ship their coal in there, it doesn't make any difference what their rate is, it is just a paper rate?

"A. That is right.

"Q. But if they are going to participate in that market, they must have comparable rates to those of the Milwaukee?

"A. I think that is true.

"Q. And prior to the disruption of this rate adjustment in 1930 or 1932, when the Illinois Commerce Commission reduced the rates to Rockford and Freeport, the parity between Springfield and Brazil-Clinton, or the relationship of Brazil-Clinton 30 cents under Southern Illinois, had existed for 25 or 30 years, had it not?

"A. Back in 1901 and 1902, yes."

It is clear from the foregoing that the witness was testifying to the issues in Docket No. 28881—that unless rates from Indiana were on a competitive basis with the intrastate rates in Illinois, coal could not be shipped from Indi-

ana to these destinations; that the Milwaukee's rates to Rockford, Freeport and other points on its line were competitive with Illinois rates; that the other carriers serving Brazil and Linton mines would have to publish rates on the same basis as the Milwaukee's if they were to move coal to those destinations in competition with Illinois coal.

Other references in interveners' brief to the evidence are possibly as misleading and improper as the one above analyzed. The quotation of a few words or a sentence, removed from the context of the subject matter involved, may be and frequently is misleading.

We will now proceed to a discussion of the various contentions made in appellees' briefs, following as nearly as possible the subject headings used by them.

ARGUMENT.

I.

The Decision in United States v. Chicago, Milwaukee, St. Paul & Pacific Railroad Company.

The Illinois railroad and producer interveners argue under Part I of their brief that this Court, by its decision in the case of *United States* v. *Chicago, Milwaukee, St. Paul & Pacific R. Co.*, 294 U. S. 499, has told the Commission it had the power to enter the very kind of order which it has entered in I. & S. Docket No. 5139 and which is now under attack. This is a strange interpretation of the decision in that case.

Interveners start their argument under this heading with a recitation of the reduction by the Milwaukee of its rates in 1932, which were the subject matter of the above cited case, and state (page 20 of their brief) "The reduced single-line rates of the Milwaukee subsequently became effective. Such was the origin of the so-called dual basis of rates from Indiana." There is not one word of evidence in this record to sustain that statement. As pointed out in our original brief, in numerous instances rates from all the origins in a group to a given destination are not the same. This is clearly shown by Exhibits Nos. 27 and 28 (R. 1685-1686), which have been frequently referred to.

In the archives of this Court is the brief filed by the Indiana coal operators in that case. On pages 4 and 5 of that brief are tables showing the then present rates from the Brazil and Linton groups to destinations in northern Illinois, including many of the same destinations shown in Appendix A of the Commission's report in this case. It

there appears that from the Brazil group to Forreston, Byron and Davis Junction, while the rate of the carriers was generally $1.80, the rate of the Pennsylvania was $1.87; and that from the Linton group to five destinations some carriers published one rate and other carriers published another rate. For example, to Byron, the C. & E. I. and the Big Four published a rate of $1.85, and the Monon, Illinois Central and the Pennsylvania published a rate of $1.92.

Since there is no evidence on the subject in this record, it is necessary to go outside of the record to show that the statement contained in interveners' brief is unsupported in fact.

If by the statement in their brief, page 20, that "appellants now urge that the Court's opinion in that case has the effect of holding the dual basis of rates to be lawful and therefore forecloses the Commission from entering any order, such as the one now assailed, holding the dual basis unlawful," interveners mean that we contend that a carrier has the right to initiate and maintain rates which it believes economic, which are within the zone of reasonableness prescribed by the Act and which do not violate any provision of the Act, then that is a correct interpretation of our position.

We do and have argued that the Court's decision in the prior case makes no determination regarding a dual basis of rates. The question involved was the right of the Milwaukee to maintain and publish rates within the zone of reasonableness, a right which it would be deprived of if the Commission could prescribe a flat rate to apply from all origins in a so-called rate group to a given destination via all carriers serving such group.

This Court in the prior decision held that there had been no finding of fact by the Commission supported by evidence that the rates of the Milwaukee violated any provision of

the Act, and ruled that a carrier could initiate and maintain such rates as it deemed advisable so long as such rates did not violate a provision of the Act. It is clear from a reading of the report of the Commission in this case that the finding that the rates of the Milwaukee violated Sections 2 and 3 (1) of the Act was an effort to meet that language of this Court and to remove this case from the ruling of the prior decision.

The statement of this Court that the Commission had the power to curb any disruptive tendencies and to fix proper relationships and proper rates was addressed to the statement of the Commission in the report that to permit the rates of the Milwaukee to become effective would lead to a progressive reduction of rates from other Indiana points of origin and origin groups that would work into Illinois and be an endless circle destroying the whole rate structure in the Middle West. As the Court there said (p. 509):

> "The danger is illusory. The whole situation is subject to the power of the Commission, which may keep the changes within bounds. * * * Under § 15 of the statute the Commission of its own motion may conduct a comprehensive inquiry into the rates of all the lines within the area of controversy, may fix the fair relation between one line and another * * *."

No one questions the power and authority of the Commission so to do. The question presented in this case is, has the Commission instituted or conducted a comprehensive inquiry into the rates of all the carriers? Is there evidence to support the findings and statements made in the report? Is there evidence to support the order of the Commission made in this particular case, not the order it might have made on a proper record in a proceeding in which the issues were clearly defined and under evidence responsive to those issues?

We can only deal here with what the Commission did in

its order in I. & S. Docket No. 5139, *supra*, pp. 2 and 3. We submit the Commission did not conduct a comprehensive inquiry into the rates of all the carriers for the purpose of fixing a fair relationship between one line and another or to build up a structure of rates in the Middle West territory. In I. & S. Docket No. 5139 it conducted an inquiry into the lawfulness only of the new rates contained in certain specific tariff supplements filed with it and recited in its order of investigation and suspension. (R. 141-144.)

The Court in the case cited stated (p. 504):

> "This court has held that an order of the Interstate Commerce Commission is void unless supported by findings of the basic or quasi-jurisdictional facts conditioning its power."

Other cases have held that such findings must be supported by substantial evidence. Unless the Commission has found facts supported by substantial evidence that the rates of the Milwaukee violate some positive requirement of the Interstate Commerce Act, then it has failed to find the basic or quasi-jurisdictional facts conditioning the power of the Commission to act. The contention of these appellants is that in I. & S. Docket No. 5139 the Commission has failed to find facts, supported by substantial evidence, with respect to any of the rates from any origin in Indiana to any destination in Illinois that constituted a violation of the Act and that therefore it had no power to enter any order with respect thereto.

II.

The Jurisdiction of the Commission to Enter Its Order in I. & S. Docket No. 5139.

A. Respecting the Existing Rates and Rate Relationships.

In Part II of each of appellees' briefs they discuss the subject matter of Point IV of our original brief, pages 62 to 68.

They contend that in I. & S. Docket No. 5139 the Commission could have found the proposed new rates unlawful and could have prescribed specific rates in lieu of the proposed rates, which specific rates would have been different from the existing rates, and that therefore it could enter an order that would affect the present rates. That is not the point.

The point here is that by its order the Commission required the proposed new rates to be cancelled, without prejudice to the establishment of rates on the bases approved; the order did not prescribe specific rates or rate relations, in lieu of the proposed new rates, which the carriers were *required* to publish. After disposing of the entire and only subject that was involved in I. & S. Docket No. 5139, the Commission then proceeded to enter an order requiring changes in existing rates and rate relations that were not before it for investigation. That the Commission did not have the power to do.

As we have pointed out, the Commission's authority under Section 15 (7) of the Act is predicated upon the filing with the Commission of schedules of new rates. The new rates, filed to become effective August 2, 1942, were the only subject before the Commission in I. & S. Docket No. 5139. That is the only inquiry that was ordered by the Commission. It is futile to argue that, if the Commission had entered into some other kind of investigation, some broader investigation would have been conducted involving other issues and the legality of present rates and the Commission would have power to enter such an order. That is not the situation confronting this Court.

Interveners cite, at page 27 of their brief, the case of *Western Paper Makers' Chemical Company* v. *United States*, 271 U. S. 268, saying that there this Court upheld an order of the Commission, just like that in this case,

which found unlawful and ordered cancelled rates under suspension and prescribed a new basis of rates for the future. They are in error. The Commission plainly said in its reports there under review that "no order prescribing the rates herein found reasonable will be entered at this time." *Naval Stores from Southern Producing Points to Various Destinations*, 87 I. C. C. 740, 756; 89 I. C. C. 634; *Western Paper Makers' Chemical Co.* v. *Director General*, 91 I. C. C. 223, 236. No order was entered in that case by the Commission compelling the publication of any specific rate or rate relationship. At no point in the proceedings before the Commission, the consideration by the District Court of the application for injunction, or in the appeal to this Court was there raised the question of the Commissioner's authority under Section 15 (7) to require publication of a particular rate or rate relationship.

To the same proposition all appellees cite also the following: *Akron, C. & Y. Ry. Co.* v. *United States*, 22 Fed. (2d) 199, 203; *Advances in Rates—Western Case*, 20 I. C. C. 307, 314; *Lignite Coal From North Dakota*, 126 I. C. C. 243, 244-5; and *Sioux City Terminal Railway Switching*, 241 I. C. C. 53, 73-4.

In *Akron, C. & Y. Ry. Co.* v. *United States, supra*, a three-judge court sitting in the Western District of New York had before it for review the Commission's decision in *Eastern Salt Cases*, I. & S. Docket No. 2440, and related dockets, reported in 122 I. C. C. 21. The Commission concluded in that proceeding, which included two complaint cases along with the investigation and suspension case, that an order should be entered in I. & S. Docket No. 2440 requiring the cancellation of the suspended schedules. The order prescribing reasonable rates for the future was entered in its complaint Dockets Nos. 16695 and 14250, heard in conjunction with I. & S. Docket No. 2440. The

language quoted from the Court's opinion appearing in appellees' briefs clearly establishes that the District Court's holding, that the Commission had power to increase or decrease existing rates, rested on the Commission's authority under Section 15 (1).

In *Advances in Rates—Western Case*, 20 I. C. C. 307, the increased rates on some 200 commodities were under voluntary suspension. The Commission concluded that the schedules of increased rates were not justified and asked that the carriers withdraw the proposed tariffs, indicating that if such action was not taken the Commission would further suspend the rates and issue an order directing the maintenance of the present rates. The Commission there made no order requiring, nor did it indicate it would attempt to make any change in the existing rates. The comments of the Commission quoted in appellees' briefs were not relevant to its determination and can hardly be said to establish the proposition of law for which they cite the case.

In *Lignite Coal from North Dakota*, 126 I. C. C. 243, the Commission had before it for rehearing its decision in 89 I. C. C. 726. There the carriers proposed increased rates on lignite from mines in North Dakota to destinations in the Dakotas and Minnesota. In its report the Commission concluded that the schedules under suspension had not been justified and entered an order requiring their cancellation. It concluded, also, that the existing rates were too low, but did not make any order with respect to the existing rates. Instead, the Commission submitted the matter to the parties for the purpose of securing their views as to the proposed rates for the future and asked that they bring to the Commission's attention the conclusions they reached. The carriers were unable to agree and the protestants requested that the case be set down

for further hearing. Accordingly, the case was re-opened and a *hearing was had specifically to determine reasonable rates for the future.* When considered in the light of the fact that the Commission conducted a further hearing specifically to determine reasonable rates for the future, of which all the parties had notice and which necessarily involved changes in existing rates, the language from the decision of the Commission quoted in appellees' briefs is of no weight.

In *Sioux City Terminal Railway Switching*, 241 I. C. C. 53, the Commission had before it not only an investigation and suspension proceeding but a complaint in its Docket No. 27899, specifically alleging that existing practices and charges in connection with the switching services involved were unreasonable and unduly prejudicial. Further, the parties had notice of a hearing concerning, and presented evidence and arguments respecting their various contentions as to, the lawfulness of providing and maintaining private sidings within the plants of some shippers and not others.

Thus, while appellees all contend that in an investigation and suspension proceeding under Section 15 (7) of the Act the Commission has the power to consider the lawfulness of and require changes in existing rates, they do not cite any authority which has so construed Section 15 (7) in a case such as we have here. The casual statement, on page 29 of interveners' brief, that the provisions of the Act "as interpreted for many years by this Court, other federal courts, and the Commission as well," support the proposition for which they contend, does not carry any weight in the absence of citations of the cases to which they refer. The important distinction between the cases cited by appellees and that here is that the Commission did not have before it in the proceeding out of which its

order in I. & S. Docket No. 5139 was issued any complaint alleging unlawfulness in any respect in the existing relationship of the Indiana rates among themselves, nor had it entered on its own motion and without complaint any *order for an investigation into and a hearing concerning the lawfulness of the existing rate relationships from Indiana.*

Appellees argue that the order of investigation entered by the Commission on July 30, 1942, included within its scope an investigation of the lawfulness of the existing rates. We refer again to that order. (R. 141.) The very first sentence thereof reads:

> "*It appearing,* That there have been filed with the Interstate Commerce Commission tariffs containing schedules stating new individual and joint rates and charges, and new individual and joint regulations and practices affecting such rates and charges, to become effective on the 2nd day of August, 1942, and later, designated as follows: * * *"

Then follows a designation of numerous supplements to certain tariffs of the carriers, involving not the tariffs themselves but the supplements. Then the order proceeds (R. 142):

> "*It is ordered,* That the Commission upon complaint, without formal pleading, enter upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in the said schedules contained in said tariffs, viz.:
>
> The Baltimore and Ohio Railroad Company:
> Supplement No. 42, * * *
>
> Chicago, Burlington & Quincy Railroad Company:
> Supplement No. 38, * * *"

The order then enumerates other tariff supplements and continues (R. 144):

> "And the rates, charges, regulations and practices stated in all schedules contained in each of the other said tariffs and supplements named in this order."

Later in the order the operation of said schedules contained in said tariffs is suspended. (R. 144.)

As the power to suspend is only to suspend the new rates, it is manifest that all the Commission purported to deal with in its order of July 30, 1942, was the new rates contained in the various tariff supplements first enumerated in that order. The appellees seek to torture that order into an order of hearing regarding the present rates.

Again in this part of their briefs appellees attempt to confuse the Court by quoting from the statement of the witness for these appellants before the Commission. That statement is not that the legality of the existing rates was before the Commission in I. & S. Docket No. 5139. The Court should remember that the proceeding in which the witness was testifying involved also the 13th Section case, Docket No. 28881. The new rates were increases over the present rates. Maintaining that the present rates were not less than reasonable maximum rates was a condition precedent practically to opposing the approval of the proposed new rates which were under suspension. Also, the contention that the present rates from Indiana to these Illinois destinations were not less than reasonable maximum rates, but were really too high, had a direct bearing upon whether or not the intrastate rates within Illinois subjected the Indiana shippers to an undue prejudice and discrimination against interstate commerce. Some of the proposed rates were objected to as creating a discrimination and a part of the quotation goes to that contention.

Appellees again quote from our brief before the Commission to the effect that there was ample evidence upon which the Commission could enter an order which would in effect restore the standard differential adjustment into this portion of Illinois as between the Indiana groups

and the Illinois groups. As heretofore pointed out, that could have been done by the Commission exercising its jurisdiction in Docket No. 28881, to require an increase in the rates within Illinois, and by exercising its jurisdiction in I. & S. Docket No. 5139, to deny any increase in the rates from the Indiana mines to these destinations in Illinois. That statement is far from saying that there was ample evidence in this record to sustain an order requiring the removal of an alleged discrimination or an alleged undue prejudice and preference among the existing rates from origins in Indiana to any destination in Illinois.

Appellees appear to be contending that in the I. & S. Docket No. 5139 proceeding the Commission had before it, and had jurisdiction and authority to act with respect to, all rates, charges, regulations and practices involved in the entire Middle West coal rate structure. Such a contention is, of course, absurd. No carrier or group of carriers would ever propose new rates if by so doing they brought before the Commission for investigation and possible change every rate, charge, regulation and practice set forth in the tariffs to which are filed supplements stating new rates. This Court has before considered and rejected such an interpretation of Section 15 (7), saying in *Interstate Commerce Commission* v. *Inland Waterways Corporation*, 319 U. S. 671, at page 689:

> "The construction contended for would have the result either of imposing a practically impossible burden upon the Commission or of making resort to the Commission's powers under § 15 (7) so rare as to make such powers of little practical significance."

Finally, we repeat, it is our contention that the Commission has ordered a change in existing Indiana rates and rate relations, its *statutory authority* over which *was never invoked*, as plainly required by Section 15 (1) of the Act, by the issuance of an order for investigation and

hearing into the lawfulness of such existing rates and rate relationships. The Commission's action patently is beyond its statutory authority and should be set aside.

B. Respecting the Rates to Beloit Via the Southern Railway from Princeton and Boonville, and Via the Single-Line of the Milwaukee from Brazil and Linton.

Under this heading the appellees argue that the Commission had jurisdiction over the single-line rates of the Milwaukee to Beloit so it could require a change in such rates, although it did not have jurisdiction over the rates of the Southern Railway from the Princeton and Boonville groups to Beloit. Inasmuch as the order of the Commission did not purport to require any change in the existing rates to Beloit, that matter is not argued in our brief.

It is urged in our brief (pp. 87-89) that the action of the Commission in approving the rates to Beloit, shown in Appendices A and D to its report, is arbitrary and capricious, but inasmuch as no rates were ordered into effect there is nothing to enjoin in that respect, except to enjoin the whole report as arbitrary. The Commission in its report recognized the single-line rates of the Milwaukee to Beloit were not before it. (R. 192.)

Appellees have here argued a point not raised by these appellants in their brief.

III.

The Commission's Conclusion That the Present and Proposed Rates From Indiana Are Unlawful in Violation of Sections 2 and 3 (1) of the Act.

The appellees argue under Part III of each of their briefs that the Commission's conclusion that the present and proposed rates from Indiana are unlawful, in violation of Sections 2 and 3(1) of the Act, is supported by substantial evidence and adequate findings. This apparently is in answer to Points II and III of our original brief, pages 32 to 61.

Again appellees have avoided the point of our argument regarding Section 2 of the Act and the failure of the Commission in this case to make findings of facts supported by evidence which constitute a violation of Section 2. The Section prohibits unjust discrimination in the transportation of like commodities under substantially similar circumstances and conditions. The fault of the report is that there is no evidence that coal moving over the direct line of the Milwaukee from a point on its line in the Brazil district and, for example, coal moving from a point on the line of the New York Central in the Brazil district to Rockford, or other destinations in northern Illinois, moves under substantially similar circumstances and conditions. In fact, it negatives the possibility of such a finding because the very origins are different and the circumstances and conditions of transportation must necessarily differ. We also pointed out in our original brief, pages 35 to 39, that this Court and the Commission have over a long period of years held that, to constitute a violation of Section 2 of the Act, shipments at different rates must be between the same termini, the same distances and over the same routes.

Even though there had not been such a definite and

clear interpretation of Section 2 by the Commission and this Court, nevertheless in this case there was no evidence from which the Commission could conclude or find that the circumstances and conditions of contemporaneous transportation of coal from a point on the Milwaukee and a point on one of the other railroads serving origins in the Brazil or Linton groups were substantially similar, because of the complete lack of evidence of any of the circumstances and conditions under which coal or any other traffic might move from an origin on any of those other railroads.

The witness testifying regarding the conditions on the C. & E. I. Railroad, who had heard the complete and detailed description of the circumstances and conditions prevailing on coal moving over the line of the Milwaukee, stated that he could not compare the operations on the C. & E. I. with the operations on the Milwaukee. (R. 805.) In the absence of evidence of those conditions, other than the length of haul from origin to destinations, it was impossible for the Commission to make any findings that the transportation was performed under substantially similar circumstances and conditions.

At page 43 of interveners' brief reference is made to the record pages 732-778, 802-824 and 1683-1684, for substantial evidence of operating conditions. Remembering that the only question here is discrimination as between origins in Indiana by carriers serving Indiana, we call the Court's attention to the fact that the evidence appearing at record pages 732 to 749, inclusive, is the testimony of Mr. O. E. Pearson who described the operating conditions on the Chicago, Burlington & Quincy Railroad *within Illinois*. That railroad does not serve any Indiana point of origin. When asked about other roads he stated (R. 748) he had no first hand knowledge of the operating conditions on any other railroad in that district.

The evidence from record pages 749 to 777, inclusive,

consists of testimony of Mr. S. F. Lynch regarding the operating conditions on the Illinois Central *from origins in Illinois to destinations in Illinois, Wisconsin and Iowa. He did not mention the operating conditions from mines in Indiana.* At record page 758 the witness said he was confining his testimony to operating conditions on the Illinois Central from districts *within Illinois,* that he was not testifying regarding operating conditions on any other railroad to any point in Illinois and that he could not intelligently testify regarding any other railroad as he had no personal knowledge of the operating conditions on any other railroad.

At record pages 778 to 802, inclusive, is the testimony of Mr. W. J. Whalen, to which we referred in our original brief, pages 13, 14 and 42, regarding operating conditions on the Milwaukee from mines in Indiana to destinations in Illinois and beyond. At record pages 802 to 808, inclusive, is the testimony of Mr. C. H. Fischer, of the C. & E. I. Railroad, to which we refer above and in our original brief, pages 14 and 42, regarding the operating conditions from mines on that line in Illinois and Indiana to Chicago, in the course of which (R. 805) the witness was asked if he heard Witness Whalen's testimony, to which he said yes; and then he was asked if the movement of coal from the Brazil group on the C. & E. I. was comparable with the movement of coal from the same group on the Milwaukee:

> "The Witness: I don't know that Mr. Whalen went into detail to such an extent that I would be furnished the information to enable me to answer your question.
>
> "Q. Then you don't know.
>
> "A. No, I wouldn't answer that."

At record pages 1683-1684, interveners obviously refer to Exhibits Nos. 18 and 19 introduced by Witness Fischer for the C. & E. I. Railroad.

At record pages 808 to 824, inclusive, Witness Charles

H. Longman testified regarding the operating conditions *within Illinois*, and to Iowa and Wisconsin on the Chicago & North Western Railroad.

That constitutes what interveners term substantial evidence of operating conditions affecting the movement of coal from various groups in Indiana to destinations in Illinois. We, frankly, question the propriety of interveners' reference to record pages 732 to 778 and 808 to 824 as evidence to support the Commission's finding "that transportation conditions over the Milwaukee's single-line routes were substantially similar to these obtaining over joint-line routes," when they know there is not one word of testimony or evidence in these pages of the record regarding the operating conditions via any carrier from any Indiana origin point.

The brief of the Government and the Commission may not contain such blind references to the record for evidence that is not there, but their brief is nonetheless wanting in any reference to or discussion of *evidence of record* to support the Commission's order. Their brief is indeed unique in that they consistently and throughout the brief cite the Commission's statements in its report as support for the report and order. Certainly, if there is so much evidence in a record of some 2850 transcript pages and 118 odd exhibits to support the Commission's report and order, they should have found it possible and convenient to refer by record page to some of such evidence. We have, we believe, convincingly demonstrated in our original brief and in this reply that there is no support whatever in the record for many of the basic findings and conclusions of the Commission. It is not that there is some, but not sufficient, evidence to support, for example, the Commission's conclusion that the transportation conditions of the single-line routes of the Milwaukee and the Illinois Central do not differ materially from those over the joint-line routes

to destinations in northern Illinois, but our contention is rather that there simply is no evidence whatever in the record of the transportation conditions over the joint-line routes from any Indiana origin, except possibly the origins on the C. & E. I.

Interveners apparently refuse to acknowledge that there was not one word of evidence anywhere in the record regarding the circumstances and conditions surrounding the transportation of coal from Indiana origins on the Pennsylvania, New York Central, the Monon, B. & O., the Southern Railway, the A. W. & W. or the Indiana Railroad, all of which serve origins in one or more of the so-called coal groups in Indiana.

On what then did the Commission base the statement repeated in appellees' briefs that the transportation conditions over the single-line routes of the Milwaukee and the Illinois Central do not differ materially from those of other lines in the same group? There was no evidence whatever on the subject of the operating conditions on the Illinois Central from Indiana origins served by it. If the evidence regarding the C. & E. I. can be treated as something from which the Commission could draw inferences and make comparisons of operating conditions, then we submit that only with respect to the movement via the C. & E. I. could the Commission make any finding of unjust discrimination under Section 2; but it has made a blanket statement wholly unsupported by evidence and it has made an order that is not confined to the rates of the Milwaukee in conjunction with the C. & E. I.

It is no accident that the record contains no evidence of the transportation conditions in moving coal from Indiana mines via any of the many carriers serving them, except the Milwaukee and the C. & E. I. The fact is that the interveners, including the railroad interveners who had the burden of proof before the Commission and the intervening

Illinois producers, offered evidence and proceeded throughout the hearing before the Commission on the theory that the issue was that the Illinois intrastate rates were discriminatory against interstate commerce in coal moving from Illinois to Iowa and Wisconsin. Hence, they confined their proof to transportation and operating conditions within Illinois and from Illinois to Iowa and Wisconsin. It is nowhere contended that there was any discrimination in the Indiana rates as between Indiana origins and groups. Had the carriers so conceived the proceeding they would and easily could have offered evidence of the transportation conditions from Indiana. Certainly these appellants would have done so had we any indication that such relationships were in issue. Confronted with the order of the Commission, which interveners would like to sustain because of the obvious competitive advantages they would derive from it, interveners simply are laboring to supply what they know to be a fatal lack of evidence in the record to support the Commission's conclusion of and order to remove discrimination under Section 2.

In Part III of the brief of the Government and the Commission it is stated:

> "As to the point made that the mines within a group are not the same origin points, it seems evident that the Milwaukee cannot consistently, for certain of its rates, treat the mines in a group as different origins and, at the same time, for others of its rates, treat such mines as one origin point. The Milwaukee, while insisting for purposes of its single-line rates that the mines in the Brazil and Linton groups are distinct origin points, is, nevertheless, party to the group, or joint-line, rates which treat all the mines in the respective groups as one origin."

This is a misstatement of the facts and might mislead the Court. The Milwaukee in its tariff publishes rates from origins in its Brazil group and also the origins in its

Clinton group. The C. & E. I. publishes rates from its Brazil group and lists the origins to which those rates apply. The Milwaukee joins in some of the rates so published by the C. & E. I. The Pennsylvania publishes rates from certain mines in the vicinity of Brazil and Terre Haute and publishes the same rates from several mines. The Milwaukee joins with the Pennsylvania in the publication of some of those rates.

In other words, each carrier publishes rates from origins on its line. There is not one tariff in which all carriers join in publishing a group rate or group rates. It is the individual action of each carrier, and each carrier treats each of the origin points as a separate and distinct point on its line, as it is, but merely provides that from certain of those origins the same rate will apply to a given destination.

As stated by the Government, one would gather that there was but one tariff in which all the lines published a group rate to Rockford, Beloit or any other point. This is incorrect.

Again under this point interveners quote from our brief in support of the exceptions to the Examiner's report, which brief dealt with, as shown by the context of the exceptions, the general operating conditions in Illinois and from Indiana to Illinois. As shown in the testimony of Mr. Whalen (R. 798-800), he thought the conditions from Indiana over the Milwaukee to these destinations were slightly better than the conditions prevailing on the C. B. & Q. and about the same as the conditions within Illinois via the Illinois Central. That justifies the statement in a Section 13 proceeding that as between the principal carriers serving Indiana and Illinois the operating conditions are substantially similar. The exhibits of the C. & E. I. show curves similar to those of the Illinois Central, but that does not establish that the operating condi-

tions from mines on the Pennsylvania or the New York Central, in the Brazil district, or on the B. & O., the Monon or the C. & E. I., in the Linton district, to Rockford are the same as those via the single-line of the Milwaukee; nor does the testimony of Mr. Scott quoted on page 44 of interveners' brief that in general the transportation conditions from Indiana were similar to those from Illinois.

In view of the absence of any reference to any evidence that would sustain the Commission's conclusion that the Indiana rates violate either Section 2 or Section 3(1) of the Act, interveners content themselves with further quotations from our brief before the Commission on operating conditions, Mr. Scott's statement in the record as to the position of the Indiana producers regarding the proposed rates (R. 1060), and to statements by Mr. Kuhls, witness for the Milwaukee, to the effect that if the other roads serving Indiana origins did not publish a basis of rates the same as the Milwaukee's to these destinations, so as to compete with the Illinois intrastate coal rates, they could not expect to move traffic.

We have pointed out in our preliminary statement that the partial quotations from the testimony and statements of these witnesses is apt to be misleading. Interveners say that Mr. Kuhls testified that he did not see why there should not be one rate via all routes from each of the groups in Indiana to each of the destinations in Illinois. The fact that Mr. Kuhls could not see any reason why the other carriers should not publish rates on a basis that would meet competition from Illinois is certainly no basis for condemning the rates of the Milwaukee.

We submit and urge that nowhere in appellees' briefs on the subject of evidence and findings of the Commission have they pointed to any evidence of record that would

sustain the conclusion that the rates from Indiana violate Sections 2 or 3 (1) of the Act.

It seems strange that the competitors of Indiana coal operators, *i.e.*, the coal producers of Illinois, represented by the Central Illinois Coal Traffic Bureau and the Illinois Coal Traffic Bureau, feel impelled to support an order to remove discrimination in the existing Indiana rates as between Indiana shippers when those Indiana shippers, the appellants in this case, point out there is no discrimination and no undue prejudice or preference in those rates and that they have never so complained to the Commission. The intervening railroads, who also zealously support this order of the Commission, do not serve Indiana but are railroads that serve mines in Illinois, except the C. & E. I. and the Illinois Central, and the principal interest of those railroads is the serving of Illinois mines, not Indiana mines. (R. 1685-1686.)

At pages 47 and 48 of their brief the Illinois railroad and producer appellees say, in effect, that *United States* v. *Chicago Heights Trucking Company*, 310 U. S. 344, is an answer to all our contentions; but they so confuse our contentions as to make unavoidable their misapplication of that case here. They seem to overlook that our contentions here are *not* that the Commission has acted on uncontradicted evidence presented by other parties in a proceeding initiated by the Commission on its own motion and without complaint, but that, quite different from the contentions dealt with in the *Chicago Heights Trucking Company* case, we urge there is no evidence whatever to support the basic and essential findings and that the Commission has not here ordered an investigation into the lawfulness of the relationships among the existing Indiana rates, either upon complaint or on its own motion without complaint. In the *Chicago Heights Trucking Company* case this Court was dealing with a matter of discrimination inherent in differ-

ing charges for identical services, the only difference being that in one instance the shipper was a freight forwarder and in the other any shipper generally. That certainly is not the situation here involved in the Commission's finding of a Section 3 (1) violation to support which, we believe, we have amply demonstrated, at pages 45 to 61 of our original brief, there must be some evidence of and a specific finding that the existing Indiana rates are a source of detriment to some origin or district in Indiana and an advantage to another origin or district.

IV.

The Commission's Order to Remove Discrimination and Prejudice and Preference Is Invalid Because of the Lack of Effective Control By the Milwaukee Over the Joint-Line Rates.

Under Part IV of each of their briefs the appellees argue that the Commission's order is not invalid, because of the lack of effective control on the part of the Milwaukee over the higher joint-line rates of other carriers serving origin points in the Brazil and Linton groups or origins in the Princeton and Boonville groups.

This part of appellees' argument obviously is based upon a misconception of the Commission's order. They argue that the order was entered under Section 15(1) and not under Section 3(1), and therefore it was not necessary to afford an alternative. Appellees quote a footnote from the opinion of the Court in the case of *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627, 650, referring to the statement of the Court that "Where an order is made under § 3 an alternative must be afforded." The footnote reads:

> "This is not true of an order pursuant to § 15(1), prescribing maximum or minimum or maximum and

minimum rates; but the present orders were not issued under that section."

They say this is a complete answer to our contention. That is not so.

Pursuant to Section 15(1), the Commission may prescribe minimum or maximum or maximum and minimum rates. But the order here involved was not issued under that section. Certainly the language of the Commission's report and order shows that the Commission did not think it was acting pursuant to Section 15(1). The order (*supra*, pp. 2 and 3) recites that the carriers shall "cease and desist from practicing * * * undue prejudice and preference *under Section 3(1)* * * * and apply rates and charges which will avoid and remove said undue prejudice and preference." (Emphasis supplied.) The order does not prescribe a particular rate or rates which shall be made and observed either as minima or maxima in order to remove the alleged prejudice and preference. Further, in Conclusion No. 1 of its report (R. 210), the Commission plainly says that the rates are "in violation of Section 3(1) of the Act * * * to the extent that such rates reflect * * * rate relations * * * which differ from the relations reflected by the rates * * * set forth as approved in this report * * *." That the Commission has here prescribed a *relationship of rates*, as distinguished from a particular rate, which it seeks to compel carriers to publish to avoid a violation of Section 3(1) is so plain it hardly warrants further discussion.

When this Court, in the *Texas & Pacific* case, referred to an order entered pursuant to Section 15(1) and, in the later case of *Youngstown Sheet & Tube Co.* v. *United States*, 295 U. S. 476, referred to an order being entered under Section 15 and not under Section 3, it was dealing with specific rates required by the Commission to avoid

a Section 3(1) violation, not to an order to remove the violation by reducing or eliminating a differential between existing rates. If the facts warrant, the Commission may enter an order requiring a specific rate to cure an instance of undue prejudice or preference, and it is such an order that is referred to in the *Youngstown* case and the footnote to the *Texas & Pacific* case. But as heretofore pointed out, no specific rates were required by the order in this case, and we again refer the Court to the language of that order appearing in this reply brief, *supra*, pp. 2 and 3.

Furthermore, in our original brief (p. 57) we argued there was no evidence that the Milwaukee exercised any effective control over the rates published by any other carrier serving mines in Indiana. That statement has not been refuted by the briefs of appellees. No evidence has been pointed out that the Milwaukee did exercise such control, that it did so effectively participate in the rates of other carriers serving Indiana that it could control the differences between its single-line rates and the rates of such other carriers. That argument is not addressed to any requirement of an alternative in complying with an order of the Commission to remove undue prejudice. It is addressed to the proposition that a specific finding of control of both rates involved, based on evidence of record, is a condition precedent which must exist before the Commission can determine that there is a violation of Section 3(1) of the Act.

In *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627, at page 646, it is said:

> "Exemption * * * was granted * * * pursuant to a rule which the Commission had consistently followed since its organization; namely, that a carrier may not be held responsible for undue prejudice or preference unless both of the localities affected are upon its

lines, or it effectively participates in the rates to both. * * *"

In the same case it is said, pages 649-650:

> "Where * * * a carrier whose lines reach, or which controls the rate to, one of the destinations, is a party to a joint rate to the other, but cannot make or control the latter rate, or though it were to withdraw as a party thereto, or to cancel the rate, the discrimination would still continue—it cannot be held responsible, nor can any order to remove the prejudice run against it. * * * Assuming that neither rate is unreasonable, the one carrier cannot be compelled to alter its rate, because the other's is higher or lower for the same service. A carrier or group of carriers must be the common source of the discrimination—must effectively participate in both rates, if an order for correction of the disparity is to run against it or them."

There being no evidence that the Milwaukee effectively participates in or controls the rates of other carriers serving origins in Indiana to Rockford or other destinations in Illinois, no order to remove the disparity can run against it. The question of an alternative only arises where the Commission has jurisdiction to enter an order to remove the undue preference or prejudice.

At pages 57 to 59 of their brief, intervening Illinois railroads and producers argue that all the railroads serving Brazil and all the railroads serving Linton and all the railroads serving all the mines in Indiana are one group of railroads and, therefore, the Commission can say that as a group they are all guilty of violating Section 3(1) because the Milwaukee, in order to compete with the Illinois rates, maintains a rate under which coal can move from Indiana to Rockford. This is a far carry. Such a doctrine would completely annul the decisions of this Court that a carrier, within the limitations of not violating

any section of the Act, has the alternative to publish and maintain such rates as it deems advisable. It would annul the decisions of this Court that a carrier cannot be held responsible for a difference in rates unless it effectively controls both rates. The Milwaukee desires to continue its lower single-line rates, because it knows that only on such rates can the mines in the Brazil and Linton groups compete with Illinois mines at Rockford and northern Illinois destinations. Other carriers serving those groups do not care to make it possible for the mines on their lines to compete in these markets with Illinois coal. The Milwaukee has stood willing to join with these other carriers in joint-line rates on the same basis as its single-line rates. They decline to do so. If the Milwaukee so effectively controls the higher joint-line rates from origins on other carriers in the Brazil and Linton groups that it can be held responsible for an alleged violation of Section 3(1) resulting from such a situation, we invite the appellees to demonstrate to this Court how and by what means the Milwaukee can compel the Pennsylvania, the New York Central, the B. & O., or any other carrier serving these groups to join with it in joint-line rates at the level of its single-line rates or anywhere between its single-line rates and the existing higher rates of the other carriers. Yet the order requires the single-line rates of the Milwaukee and the joint-line rates of the other carriers to be on the same level, though not necessarily the same as the existing or approved joint-line rates. And it would not remedy the situation for the Milwaukee to withdraw from all participation in the joint-line rates as the disparity for which the Milwaukee is blamed would still exist. That the appellees have not attempted to reply to this challenge, as indeed they cannot, is the most convincing possible demonstration that the Milwaukee does

not so control the situation that a valid Section 3(1) finding can be made against it.

Appellees urge also that a complete answer to appellants' contention is that whether or not the Milwaukee exercises control is a question of fact and on this the Commission has spoken, both in its report and order, and that "the Commission's finding, on a factual matter entrusted to it for determination, being adequately supported by the evidence," should not be disturbed by this Court. The deficiency in the argument of appellees is the failure to point out one word of evidence that the Milwaukee has any control over the rates of the other carriers serving Indiana mines. The Commission's finding on a factual matter, when there is no fact or evidence or testimony in the record to support such a finding, is a nullity and not binding upon this Court. Certainly appellees do not wish to appear to urge that this Court may not look at the record to determine whether the Commission's finding has some support in the evidence. The cases they cite do not so hold. They would assist the Court and perhaps more effectually meet the contentions of appellants if they would but point to the pages of the record where such evidence appears.

V.

The Approved Rates and Rate Relationships.

Under Part III of the brief of the Government and the Commission and Part V of the brief of the Illinois railroads and producers, appellees all argue that there is substantial evidence to support the prescription of the relationships reflected by the rates set forth in the report as approved rates, and that the action of the Commission approving such rates is logical and rational. They en-

deavor to spell out the reasoning process of the Commission in reaching the conclusion that the approved rates are proper.

Nowhere do they point to the record page for any evidence to sustain their argument. In this portion of their brief the Illinois railroad and producer interveners commit the same error as the Government and the Commission pursued throughout their brief, namely, that of citing the Commission's report in lieu of record evidence. Every single record reference in this part of interveners' brief to support fact findings and statements, save the footnote on page 67, is to those pages of the record where the Commission's report is set forth. We have arrived at an unusual development in the law on review of administrative determinations when reference merely to the statements of the Commission in its report supplies the necessary evidentiary support for the report and order and precludes this Court on review from looking further.

Again they quote from our briefs before the Commission to the effect that in a group or differential adjustment the whole body of the adjustment must be considered, not individual rates. The fault with the Commission's report is that it has not treated the situation presented in I. & S. Docket No. 5139, or in Docket No. 28881, as a group or differential adjustment. The rates to Wisconsin, Iowa and Minnesota illustrate what a group or differential adjustment is, *i.e.*, to every destination the differential relationships between predominant rates from two given groups are identical. As shown by the evidence here, to points in Wisconsin, northeastern Iowa and southeastern Minnesota the rates from the Brazil group to every point are 30 cents per ton under Southern Illinois and on a parity with the rates from the Springfield group in Illinois. (Exs. Nos. 48 and 49; R. 1689.) To each of these

destinations in the territory shown in the map, Exhibit No. 48, the Indiana groups are on the basis of their standard differentials, Linton 10 cents over Brazil, Princeton 17 cents over Brazil and Boonville 20 cents over Brazil. This is so irrespective of variations in the difference in distance between Brazil and Southern Illinois. The evidence further shows that to all of these destinations the Brazil rate is the same as the Springfield rate.

Where that situation exists there is truly a group and differential adjustment. But to the northern Illinois destinations involved in this proceeding the Commission approves rates that are not on a group and differential basis, in that among the twelve so-called representative destinations it has fixed five different relationships. It has arbitrarily approved rates to each individual point, without one word as to why those specific rates are approved, and then it has averaged those rates from each group to the twelve points to make those comparisons. It should be kept in mind that these twelve points were handpicked by the Illinois operators and the railroads serving Illinois. By making a high rate from Indiana to Rockford, where there is business, and a relatively low rate from Indiana to Rochelle, where there is but little business, and averaging the two, it is possible to arrive at comparable averages with the rates from Illinois. The Government and the Commission point to the low rates from Brazil to Forreston and Sterling, in relation to the rates from Springfield. We readily concede, as we have said before, that the approved rates from Indiana to Amboy, Byron, Forreston, Polo, Rochelle and Sterling, which are relatively unimportant markets for coal, are relatively too low when compared to the rates from Illinois. Likewise the approved Indiana rates to Rockford, Freeport, DeKalb, Geneva and Belvidere, which are the most important markets for coal in the territory involved

in this case, are too high. Averaging such rates to all these destinations does not establish that the approved rates to any such destination are proper. Since the Commission has not treated these destinations as a group and differential adjustment we ask simply that the rates to each desination from each group be fair and reasonable.

Interveners quote from the report of the Commission that comparisons based on distance cannot be accepted as controlling, but nothing appears as to what the Commission did consider as controlling. There is not one word in the report as to why the Commission deems proper a rate of $1.89 from Brazil to Dixon for an average haul of 257 miles and also considers a rate of $2.07 proper for a haul from the Brazil group to Rockford for an average distance of 251 miles. (R. 214, 216.) Why the Commission considers proper a Brazil rate to Byron of $1.95 for a haul of 248 miles and a rate of $1.89 for a haul to Amboy of 246 miles is wholly unexplained. (R. 213.) Why the Commission should consider proper a rate of $1.89 from Brazil to Sterling for 287 miles and a rate to Freeport of $2.07 for 287 miles is not explained in the report. (R. 214, 215.)

When rates are established in a logical manner under a group and differential adjustment, the rate is fixed from the base group, Southern Illinois, and the differential is then applied to that base group. This is what was done at Beloit several years ago. The Commission required that the rates to Beloit from Illinois, Indiana and Western Kentucky should not exceed by more than 25 cents a ton the rates from Rockford. *Fairbanks-Morse & Co.* v. *Alton & S. R.*, 195 I.C.C. 365. The rate from Southern Illinois was established at 25 cents a ton over the rate to Rockford and then all the rates from all the other groups in Illinois, Indiana and Western Kentucky were made on their standard differentials over or under Southern Illinois.

That procedure is not followed by the Commission in this case; nor has it used any other base group. The relationships that result are the happenstance of the application of arbitrary rates fixed to each destination, so far as the relationship between the Indiana groups and the Illinois groups are concerned. However, the relationship between the Illinois and Indiana groups is not a subject matter involved in this appeal. We point out the idiosyncrasies of the approved rates and the lack of evidence or reasoning to support those rates for the purpose of showing that the report and order of the Commission are arbitrary and capricious.

Appellees in their brief state that the Commission considers the differences in competitive conditions as reflected in the figures of production from the various origin groups in Illinois and Indiana. As we have pointed out in our original brief, we believe the Commission was influenced by these figures. Those figures show that the Southern Illinois operators, and Illinois generally, had suffered substantial reductions in their shipments to all destinations since 1923, that in 1941 Illinois shipments to all destinations were but 61 per cent of its shipments in 1923, whereas Indiana shipments to all destinations were 94 per cent of the shipments for 1923. Notwithstanding the fact that Exhibit No. 99 shows that to this territory Illinois was shipping coal at the rate of five cars for one from Indiana, and that in 1941 Indiana shipped but 51,000 tons of coal to the six destinations shown, other than Rockford, the Commission must have realized that the rates it approved would prevent any shipments from Indiana to this territory and would exclude Indiana coal from Rockford as effectively as it had excluded it from the other six destinations. This, as shown in our original brief, is beyond the power of the Commission. It is an attempt to allocate markets by means of the manipulation of freight rates.

The sum and substance of the approved rates is to deprive Indiana of the markets at Rockford and Beloit, which two cities consume more coal, as shown by Exhibit No. 4, Part VIII, than the other six destinations in Illinois combined. (R. 1676-1677.) In 1941, Beloit used over 75,000 tons and Rockford 278,000 tons from Illinois. In 1941, Beloit used 51,000 tons of coal from Indiana and Rockford 211,000 tons. Of the destinations shown in Exhibit No. 4, Part VIII, page 1, Rockford and Beloit used 260,000 tons of the 362,000 tons shipped by Indiana, and these are the markets that would be taken from Indiana and handed to Illinois by the rates approved in the report.

VI.

The Determination By Only Two Members of a Statutory Three-Judge District Court.

Only the appellees, the Government and the Commission, argue in their brief in opposition to the contention made in Part I of our original brief, pages 28-37, that two members of a statutory three-judge Court convened under the provisions of U. S. Code, Title 28, Section 47, to consider an application for an injunction, suspending or setting aside an order of the Interstate Commerce Commission, cannot determine the same when the third member of the Court is unable to and does not participate in such determination. They urge that while the statute plainly requires that in connection with the issuance of restraining orders and interlocutory injunctions the application "shall be heard and determined by three judges," there is "little warrant or urgent need for a like rigid restriction in cases on decisions on final hearing."

The statute provides in unmistakable language, however, that "upon the final hearing of any suit brought to

suspend * * * any order of said commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply" as in the case of the hearing on the application for an interlocutory injunction. If, as they contend, such requirements are rigid and are inclined to delay "court review of the Commission's rate and transportation orders," the remedy would seem to lie in the Congress which has imposed such restrictions in words so plain as not to permit of any other construction than that which we press before this Court.

They state in their brief, "The Government and the Commission are not, of course, contending that two judges may sit to hear a cause under either Section 266 or the Urgent Deficiencies Act." That is an admission the provision that the "application shall be heard * * * by three judges" applies upon final hearing, while contending that the provision "shall be * * * determined by three judges" does not. Such an interpretation of the statute is, of course, absurd. While we do not urge that the three judges shall be unanimous in their views, nevertheless, the three judges must both hear the application and participate in the determination of it.

Notwithstanding that in *Cumberland Telephone & Telegraph Co.* v. *Louisiana Public Service Commission,* 260 U. S. 212, as we point out in our original brief, page 30, the Court had before it only a motion to set aside an order of supersedeas and injunction entered by one member of the three-judge Court, this Court there considered fully the provisions of Section 266 of the Judicial Code, which are substantially the same as the provisions of the Urgent Deficiencies Act here involved, and concluded, at page 218:

> "*Compliance with the statute requires the assent of the three judges given after the application is made* evidenced by their signatures or an announce-

> ment in open court with three judges sitting followed by a formal order tested as they direct. * * * *We have no proper evidence of the participation of the three judges in the injunction here and therefore grant the motion to set it aside as void and made without jurisdiction.*" (Emphasis supplied.)

We think the case controlling here.

Appellees need not have devoted so much effort to a discussion of *Virginian Railway Co.* v. *United States*, 272 U. S. 658, 672. We cited that case at page 31 of our original brief solely for the proposition that the provisions of Section 266 of the Judicial Code, considered by this Court in the *Cumberland* case, are substantially the same as the provisions of the Urgent Deficiencies Act of October 22, 1913, with which we are here concerned. This Court said at pages 671-2:

> "The language of § 266 * * * is substantially the same as that employed in the Act of October 22, 1913. The two statutes are *in pari materia.*"

Appellees cite *State of Ohio, et al.* v. *United States*, 6 Fed. Supp. 386 (affirmed 292 U. S. 498), and *Oregon-Washington R. & Nav. Co.* v. *United States*, 47 Fed. (2d) 250 (affirmed 288 U. S. 14). The cases clearly support the construction of the statute we urge.

In *State of Ohio, et al.* v. *United States, supra*, the three judges comprising the Court apparently conferred and determined the cause before the death of the judge assigned to write the opinion. The participation of the deceased judge in the determination was established by the opinion written by him. The opinion was published as concurred in by the two other judges. Here certainly was "the evidence of the participation of the three judges," of which this Court spoke in the *Cumberland* case.

Such a meticulous regard for the requirement of the statute that the cause should be "heard and determined

by three judges" shows conclusively that the judges participating in these cases cited by appellees, as should have Judges Major and Igoe in this case, conceded the correctness of the position we take here as to the application of the statute. Since, admittedly, Judge Evans, one of the members of the duly constituted three-judge Court, did not participate in the determination of the cases before the District Court, we submit the final decree of June 5, 1946, is void and made without jurisdiction.

Conclusion.

For the foregoing reasons and considerations and those stated in our original brief, the final decree of the District Court should be reversed, or declared void as made without jurisdiction, and this cause remanded to the District Court with directions to enter a decree enjoining the order of the Commission of July 9, 1945, except the part thereof requiring the cancellation of the proposed schedules of new rates, and suspending and setting aside the report of the Commission in so far as it purports to approve rates from origins and groups in Indiana and Illinois to Rockford and other destinations in northern Illinois and Beloit, Wisconsin.

Respectfully submitted,

EARL B. WILKINSON,
ARTHUR R. HALL,
Attorneys for Ayrshire Collieries Corporation, et al., Appellants.

SAMUEL W. WITWER, JR.,
J. ALFRED MORAN,
Of Counsel.

April, 1947.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. 467

AYRSHIRE COLLIERIES CORPORATION, ET AL., AND CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA.

REPLY BRIEF ON BEHALF OF RAILROAD APPELLANT.

J. E. GOGGIN,
WILLIAM L. HUNTER,
CARSON L. TAYLOR,
Attorneys for Railroad Appellant.

A. N. WHITLOCK,
M. L. BEUHM,
Of Counsel.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

INDEX.

PAGE

1. The Contention That Two Judges of a Three-Judge Statutory Court May Determine the Issues in the Absence or Inability of the Third Judge to Act 2
2. The Contention of Appellees That the Determination by the Commission in the Report and Order Here Under Review Is Not in Conflict With the Rules of Law Announced by This Court in United States v. Chicago, Milwaukee, St. Paul and Pacific Railroad Company, 294 U. S. 499 3
3. The Contention of Appellees That the Commission Had Jurisdiction Not Only to Condemn the Proposed New Rates But Also the Then Applicable Rates in Which No Change Was Proposed 8
4. The Contention by the Appellees that the Commission Is Empowered to Require Specific Changes in Reasonable Rates in Order to Remove Discrimination 11

Appendix 17

Table of Cases

Central Railroad Company v. United States, 257 U. S. 247 15

Chicago Junction Case, 264, U. S. 258 15

Interstate Commerce Commission v. L. & N. Ry. Co., 227 U. S. 88 16

Texas and Pacific Railway Co. v. United States, 289 U. S. 627 ..... 12, 13

United States v. Chicago Heights Trucking Company, 310 U. S. 344 11

United States v. Chicago, Milwaukee, St. Paul and Pacific Railroad Company, 294 U. S., 499 ..... 2, 3, 6, 16

Youngstown Sheet and Tube Company v. U. S., 295 U. S. 476 ..... 13, 14

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. 467

AYRSHIRE COLLIERIES CORPORATION, ET AL., AND CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA.

REPLY BRIEF ON BEHALF OF RAILROAD APPELLANT.

Appellees have made no effort in their briefs to separate the contentions of the appellant coal mining operators from those of the railroad appellant. We will briefly reply to the principal contentions relied upon by all appellees in urging an affirmance. They are the following:

1. That two judges of a three-judge statutory court may determine the issues in the absence or inability of the third judge to act.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. 467

AYRSHIRE COLLIERIES CORPORATION, ET AL.; AND CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA.

REPLY BRIEF ON BEHALF OF RAILROAD APPELLANT.

Appellees have made no effort in their briefs to separate the contentions of the appellant coal mining operators from those of the railroad appellant. We will briefly reply to the principal contentions relied upon by all appellees in urging an affirmance. They are the following:

1. That two judges of a three-judge statutory court may determine the issues in the absence or inability of the third judge to act.

2. That the determination by the Commission in the report and order here under review is not in conflict with the rules of law announced by this Court in *United States v. Chicago, Milwaukee, St. Paul and Pacific Railroad Company*, 294 U. S. 499.

3. That the Commission had before it under its order of investigation the rates of the Milwaukee from mines on that railroad in Indiana to Beloit and could require changes in them, although the Milwaukee proposed no changes in those rates.

4. That the Commission is empowered to require specific changes in *reasonable* rates in order to remove discrimination, provided it exercises power granted under Section 15 of the Act.

We have set forth in the Appendix pertinent parts of the Interstate Commerce Act.

1. The Contention That Two Judges of a Three-Judge Statutory Court May Determine the Issues in the Absence or Inability of the Third Judge to Act.

The Appellees, Alton Railroad Company, *et al.*, and the Illinois and Central Coal Traffic Bureaus suggest that appellants waived the question of the jurisdiction of two judges to act for a three-judge court. If the two judges did not constitute a court, the parties could not confer jurisdiction. The United States and the Interstate Commerce Commission apparently argue that the requirement that the three judges hear and determine the case applies only to preliminary injunctions and that as a practical matter no one is harmed and the public interest is advanced by interpreting the statute as permitting two of the three-judge court to hear and determine and to issue a final injunction or to refuse a final injunction. We have urged as error the action of the two judges in finally determining

the suit in the lower court for the reason that we believe under the statute the parties are entitled to the considered judgment of a three-judge court. We believe that any other interpretation of the statute is strained and unreasonable and contrary to the accepted interpretation of the bench and bar.

2. The Contention of Appellees That the Determination by the Commission in the Report and Order Here Under Review Is Not in Conflict With the Rules of Law Announced by This Court in United States v. Chicago, Milwaukee, St. Paul and Pacific Railroad Company, 294 U. S. 499.

Appellees misinterpret the opinion of this Court in *United States* v. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company*, 294 U. S. 499.

When the lawfulness of the Milwaukee's effort to maintain competitive rates on coal from mines on its railroad in Indiana was before this Court in *U. S.* v. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company, supra*, the Court reaffirmed certain principles by which the validity of a Commission order, prescribing rates, may be tested. In that proceeding, as here, the Milwaukee was asserting its right to maintain rates on coal which would continue a long-standing relationship between its rates and the rates from competing mines on other railroads in Illinois. This Court there held:

(a) A carrier has the right to initiate rates (506).

(b) The Commission can require cancellation of such rates only if they are found and determined to be unlawful (510).

(c) The Commission's order, requiring cancellation of rates, must be supported by adequate and precise findings making the Commission's reasons understandable to the Court (506, 511).

(d) Mere recitals in the words of the statute that the condemned rates were unlawful are inadequate and the recital must be read in the light of the report as a whole (506).

(e) The Commission cannot require the cancellation of proposed rates for the asserted reason that they will disrupt a relationship unless the lawfulness of the relationship, said to be disrupted, is first determined (507).

We say the Commission ignored these principles in the report and order here under review. Appellees say that the principles announced by the Court in the prior decision have no application here and that the Commission properly ignored the right of the Milwaukee to maintain competitive rates, because, they point out, the Court said in the prior case that the Commission "may conduct a comprehensive inquiry into the rates of all the lines within the area of controversy, may fix the fair relation between one line and another and may build the structure of the rates accordingly" (509, 510).

Appellees urge in effect that the quoted language announces a rule that the recognized limitation of the Commission's jurisdiction over rates does not apply when a comprehensive inquiry into rates in an area is being conducted. We assert that what the Court said and intended to say in the quoted language from the prior case was that the Commission was empowered in a proper case to fix rates and rate relationships *provided* there was evidence and essential findings to support the conclusion.

Having in mind the law, as announced by this Court in the prior case, we examine the Commission's report and order here. Having found that the transportation conditions, under which coal moves from Indiana and Illinois groups to the involved destinations, are sufficiently similar to require the use of the same rate basis from all such groups (R. 207) and that a difference of only a few cents a

ton in the rate might divert the tonnage from one mine to another, (R. 206), the Commission required the following result (taken from the report R. 216).

To	Rockford, Illinois			Beloit, Wisconsin		
From groups	Group distance	Present rate	Rate approved in this proceeding	Group distance	Present rate	Rate approved in this proceeding
	Miles	Cents	Cents	Miles	Cents	Cents
Brazil	251	180*	207	269	210	222
Springfield	257	180	195	276	210	210

* From origins on the Milwaukee.

The Milwaukee serves mines in the Brazil group. It reaches no mines in the Springfield group. Unless the contention, urged by appellees that the Commission in a general investigation into rates is empowered to arbitrarily fix rates, is sound, there can be no justification for this result. Here the Commission, notwithstanding the decision of the Court in the prior case, requires the disruption of the long-standing relationship between the rates from mines on the Milwaukee and the rates from mines in Illinois without a finding that the relationship was unlawful. Here the Commission requires the Milwaukee to establish rates which are 12¢ per ton higher than those applying from mines in the Springfield group although the hauls from the Brazil group to these important destinations are shorter and the transportation conditions are such as to require the same rate basis.

The relation between the rates from mines in Indiana and those from mines in Illinois is of first importance and the Commission's own report shows that when the rates from Indiana mines on other railroads in the Brazil and Linton groups were relatively higher than the rates from Illinois mines those Indiana mines shipped little or no coal to Rockford (R. 206).

The reasons which induced the Commission to reach the conclusion, resulting in the rates above delineated, are not in doubt. They are clearly expressed in the report. The Commission simply misconceived its power and here did just what the Court in *United States* v. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company, supra,* said it could not do. The Commission said rates other than those prescribed for the Milwaukee would change relationships in rates between Indiana group origins and *yet it did not pass upon the lawfulness of those relationships.* The Commission clearly had doubt that the relationship was in fact lawful. Here is what the Commission said (R. 190).:

> "In considering the level of the rates from the respective Indiana and Illinois groups to these destinations, as well as to Beloit, it must be borne in mind that the differential between Linton and Princeton, the two most important Indiana groups, is only 7 cents for an average difference in distance to these 12 destinations of 65 miles (73 miles from the combined Princeton and Boonville groups). *That differential is on a lower level than any other between important groups in this midwestern adjustment.* Since it is of long standing, is in effect generally throughout the Northwest, and is not here sought to be changed, we do not feel warranted in approving its disturbance. *That low differential necessarily reflects itself in relatively higher rates from the nearer Indiana groups, as well as relatively lower rates from the more distant Indiana group or groups, than might otherwise be warranted.*" (Emphasis supplied.)

This statement explains the Commission's reasoning. The Commission ignored the long standing relationship in rates between those applicable from Brazil with those from Illinois mining origins which to Rockford had existed since 1910. The Commission ignored the necessity of relating the rates from Brazil and Linton to the rates from Illinois if railroads serving the Indiana mines in

those groups are to transport coal to the destinations in competition with railroads serving Illinois mines.

The Commission to avoid examination into the lawfulness of the relationship in the rates from the Indiana mining groups simply required inflation in the rates from the mines nearest the destination and served by the Milwaukee in order to justify lower rates from the more distant groups in Indiana than would otherwise be warranted. This treatment by the Commission was characterized by Mr. Justice Cardozo as "inaction and postponement. Responsibility was shifted from the shoulders of the present to the shoulders of the days to come" (510).

Much is said in the briefs of Appellees about the dual basis of rates from the Brazil and Linton groups in Indiana. While there would appear to be nothing intrinsically unlawful about the failure of the railroads serving different mines in a mining group to establish the identical rate to a named destination, the Milwaukee has no objection to the elimination of the dual basis of rates. It simply objects to the arbitrary method adopted by the Commission to bring about a single basis of rates from each of the groups.

The Milwaukee can see no justification or warrant in law for requiring the Milwaukee to wholly ignore competitive influences and to establish rates on a level which have prevented the mines on other railroads in the Brazil and Linton groups from competing in the destination territory (R. 206.)

The Milwaukee's only wrong is that it has at all times asserted its right to establish and maintain rates from the mines which it serves which are relatively no higher than the rates from competing mines on other railroads in the Illinois groups. It has asserted that the mines which it serves should not be penalized by the requirement that coal shipped from them pay relatively higher charges

than apply from competitive mines resulting in the denial of the right of Milwaukee mines to compete in the sale of coal in these important industrial destination cities.

3. The Contention of Appellees That the Commission Had Jurisdiction Not Only to Condemn the Proposed New Rates But Also the Then Applicable Rates in Which No Change Was Proposed.

Appellees devote several pages of their briefs to the support of the Commission's action in requiring the Milwaukee Road to increase its rates applicable to the transportation of coal from mines on its railroad in Indiana to Beloit, Wisconsin, and other changes required by the Commission in rates and relationship where the railroads proposed no changes.

At the outset attention should be called to the fact that, while the appellant railroad concurs in the views urged by the coal operators (brief p. 62 *et seq.*), that the Commission is without jurisdiction to require changes in rates not included within its order of investigation, we made no particular point of this error except to demonstrate inconsistencies in the Commission's report (our brief p. 33).

The Commission, under powers granted in Section 15 of the Act, has the undoubted right to investigate the lawfulness, not only of proposed new rates but of any rates. The question here is whether or not rates other than the new proposed rates were within the Commission's order of investigation. We believe a fair reading of the Commission's order of July 30, 1942, instituting the investigation, (R. 141) clearly indicates that the Commission intended only to investigate schedules stating new rates, which were to become effective on August 2, 1942. The

appellees argue that the investigation was into the lawfulness "of all rates contained in the tariffs named in the order". The Commission's order nowhere recites that "all rates" contained in the named tariffs are the subject of the investigation and we believe the clear intent was that tariff schedules containing new rates which were suspended by the order were the only ones under investigation. The Commission's order of investigation of July 30, 1942 recites in part as follows (R. 141):

> "*It appearing,* That there have been filed with the Interstate Commerce Commission tariffs *containing schedules* stating *new* individual and joint rates and charges, and *new* individual and joint regulations and practices affecting such rates and charges *to become effective on the 2d day of August, 1942,* and later, designated as follows: (Here follows list of tariffs containing the new rates and others).
>
> "*It is Ordered,* That the Commission, upon complaint without formal pleading, enter upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in *said schedules* contained in said tariffs, *viz:* (Here follows designation of other tariffs). And the rates, charges, regulations and practices stated in all schedules contained in each of the other said tariffs and supplements named in this order;
>
> "*It further appearing,* That *said schedules make certain increases and reductions* in rates for the interstate transportation of bituminous coal, in carload, and the rights and interests of the public appearing to be injuriously affected thereby, and it being the opinion of the Commission that the effective date of *said* schedules contained in said tariffs should be postponed pending said hearing and decision thereon;
>
> "*It is further ordered,* That the operation of the *said schedules contained in said tariffs be suspended,* and that the use of the rates, charges, regulations and practices therein stated be deferred upon interstate

traffic until 2nd day of March, 1943, unless otherwise ordered by the Commission, and no change shall be made in such rates, charges, regulations, and practices during the said period of suspension unless authorized by the Commission.

"*It is further ordered*, That the rates and charges and the regulations and practices *thereby sought to be altered* shall not be changed by any subsequent tariff or schedule until this investigation and suspension proceeding has been disposed of or until the period of suspension and any extension thereof has expired, unless authorized by the Commission. (Emphasis supplied.)

Certainly the appellees are attempting to read something into this order, as it seems clear the Commission intended its investigation to cover only schedules naming new rates, which would result in change, either in increases or reductions and not the schedules which contained the then presently applicable rates and which were not suspended. Surely this was the opinion of the Commission, for we find in the report (R. 192) "To Beloit * * * rates * * * from Brazil and Linton mines on the Milwaukee * * * are not here proposed to be changed, and, therefore, are not specifically in issue in this proceeding".

The Commission believed that the rates via the single line of the Milwaukee from mines on its railroad in Indiana to Beloit were not in issue, yet the level of these rates was required to be changed.

4. The Contention by the Appellees That the Commission Is Empowered to Require Specific Changes in Reasonable Rates in Order to Remove Discrimination.

In our brief, we urged that the Commission's recitals that the condemned rates violated Sections 2 and 3 of the Act were not supported by essential findings, that the report itself showed that the real reason for the condemnation of the rates was arbitrary and beyond the Commission's power and, if the charge that the rates violated Section 2 and 3 had any validity, the offending carrier must be afforded some alternative in removing the discrimination.

The appellees' answer to these contentions is that there were basic findings to support the Commission's conclusions, that the order was entered under Section 15 of the Act and, since the order was entered under Section 15, there is no requirement in the law that the offending carrier be given an alternative to effectuate the removal of the discrimination.

We do not intend to elaborate on the argument in our brief. We do, however, respectfully urge examination of appellees' contention. With respect to the assertion by appellees that the conclusions of the Commission are supported by adequate findings, they rely on *U. S.* v. *Chicago Heights Trucking Company*, 310 U. S. 344, where this Court upheld an order of the Interstate Commerce Commission which had condemned the publication by truckers of lower rates for the transportation of freight forwarder traffic than those rates which applied for the transportation of the traffic of other shippers. The Court there simply, and rightly, held that a carrier discriminated if it published different rates between two points, the application of which depended upon who was the shipper. In that case, quite obviously, no elaborate findings would be

necessary to support the order or for a clear understanding of what reasons and facts controlled the Commission's judgment. The Commission did not there say that the carrier could not publish lower rates, it simply held that the carrier could not have two sets of rates between the same points.

It is confusing to follow the arguments urged by the appellees, concerning the power of the Commission on the finding that certain rates are discriminatory. They apparently agree that if a Commission's order is based on a violation of Section 3 of the Act, some alternative must be afforded the offender, but here they say the order was entered under Section 15, and Section 15, they believe, empowers the Commission to prescribe specific rates without regard to the rights of the shipper or of the carrier. We agree that this order was entered under Section 15, as are all orders of the Commission which require the removal of violations of Sections 1, 2, 3 and 4 of the Act, the sections which prescribe the standards which the carrier must observe in the publication of its rates. Section 15 is a procedural statute, which authorizes the Commission to hear and determine and order the removal of any violations of Sections 1, 2, 3 or 4 found to exist in the publication of rates. The Commission does not enter any order under Section 3. It enters an order under Section 15, if there is found to be a violation of Section 3.

The appellees apparently are confused by dicta found in the note in *Texas and Pacific Railway Co.* v. *U. S.*, 289 U. S. 627. There the Court, after reciting on page 650 that "Where an order is made under Section 3, an alternative must be afforded", said in a footnote "This is not true of an order pursuant to Section 15 (1), prescribing maximum or minimum or maximum and minimum rates; but the present orders were not issued under that section". It is clear that the appellees have wholly misunderstood the meaning

of the footnote. *The Court certainly did not intend to contradict in a footnote a rule of law announced in the opinion.*

What the Court intended to have understood by the footnote was that the Commission could under Section 15 (1) prescribe maximum rates or minimum rates or maximum and minimum rates where the record would support such orders without granting to any carrier an alternative. This is made clear by the decision of the Court in *Youngstown Sheet and Tube Company* v. *U. S.*, 295 U. S. 476, where this Court upheld an order of the Interstate Commerce Commission requiring the establishment of minimum rates. In that case, involving the rates applicable to the transportation of coal from various origins to destinations in Ohio, the Commission found that rates below those specifically required to be established were unreasonably low and a minimum rate order was entered. This clearly explains what the Court said on page 480:

> "The order of the Commission was based primarily upon the reasonableness of the minimum prescribed. The existing rate structure furnished support for the finding of reasonableness.
>
> "There is no merit in the contention that the order was a Section 3 order and invalid for failure to afford the carriers an alternative of raising the contested rate or lowering others to remove discrimination. It is true the Commission found prejudice to shippers all rail, but in essence the order entered was a Section 15 order and not one made under Section 3."

Confusion results from the expression found in cases that a particular order is entered by the Commission under Sections 1, 2, 3 or 15, while as a matter of fact all Commission orders respecting rates, excepting those regarding state rates (13th Section) are made by virtue of power delegated and expressed in Section 15. In the *Texas and Pacific Case, supra,* the Court reviewed an order of the Interstate Commerce Commission, by which the Commis-

sion in exercising its authority under Section 15 required the elimination of what was found by the Commission to be a violation of Section 3. In the *Youngstown Sheet and Tube Company case, Supra,* the Court reviewed an order of the Commission entered under the authority of Section 15, and designed to require the removal of the violation of Section 1, which prohibits the maintenance of unreasonable rates.

The power delegated to the Commission by the terms of the Act, as interpreted by this Court, is clear. All that is necessary to reconcile the cases is to have an understanding of the issues before the Commission and which were reviewed by the Court.

If the assailed rate is found to be unreasonable, in violation of Section 1, the Commission, acting under Section 15, may prescribe a reasonable rate for the unreasonable rate and may, if the record warrants, prescribe a maximum or a minimum, or a maximum and minimum reasonable rate. If the assailed rate is found to be unreasonable, in violation of Section 1, and unduly prejudicial, in violation of Section 3, the Commission by an order under Section 15, may prescribe a reasonable and non-prejudicial or non-discriminatory maximum or minimum rate, depending upon the evidence of record. If the assailed rate is found to be not unreasonable but unduly prejudicial or discriminatory then the Commission, by its order requiring the elimination of the violation, must afford the carrier an alternative so that the wrong can be corrected by the raising of one rate or the lowering of another, or the altering of both. The Act, Section 3 (1) recites in part: "It shall be unlawful for any common carrier * * * to make, give or cause any undue preference or advantage to any particular person, * * *." This Section is directed to the unlawful conduct of a carrier, and the legality or the illegality of a carrier's practice depends on its own act, and not upon the act of another.

Pertinent is the statement by Mr. Justice Brandeis in *Central Railroad Co.* v. *United States*, 257 U. S. 247, 259:

> "What Congress sought to prevent by that section (Section 3), as originally enacted, was not differences between localities in transportation rates, facilities and privileges, but unjust discrimination between them by the same carrier or carriers. Neither the Transportation Act 1920, February 28, 1920 c. 91, 41 Stat. 456, nor any earlier amendatory legislation has changed, in this respect, the purpose or scope of Section 3".

This would seem to be a complete answer to the assertion of appellees that the Commission, when dealing with several railroads and many rates, can, by a broadside finding, charge a violation of Section 3 when responsibility for the discrimination cannot be charged to the conduct of one carrier or a group of carriers acting in concert.

Here there were no findings to support the recital that Sections 2 and 3 were violated. There were no findings that the Milwaukee controlled the rates from the mines said to be discriminated against or that the Milwaukee acting in conjunction with other railroads controlled the rates from mines said to be discriminated against. There was, therefore, lacking the essential element for the finding that Sections 2 and 3 were violated. The Commission has no roving power to fix rates. It has no more or different jurisdiction over rates which may form a complicated rate adjustment than it does over the single rate of one carrier. Its power is definitely circumscribed by the Act. It may only require the carrier to cancel unlawful rates and to establish rates which conform to the standards fixed by the Act. It cannot under any circumstances arbitrarily fix rates as appellees contend, but in prescribing rates it must act on evidence. "The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it." *Chicago Junction Case*, 264 U. S. 258, 265.

And in *Interstate Commerce Commission* v. *L. & N. Ry. Co.*, 227 U. S. 88, 92:

> "Under the statute the carrier retains the primary right to make rates, but if, after hearing, they are shown to be unreasonable, the Commission may set them aside and require the substitution of just for unjust charges. The Commission's right to act depends upon the existence of this fact, and if there was no evidence to show that the rates were unreasonable, there was no jurisdiction to make the order".

There is no contention by any of the parties or finding by the Commission that the rates of the Milwaukee, condemned by the Commission, are unreasonable. There were lacking essential elements from which the Commission could properly find that the Milwaukee rates were discriminatory or prejudicial and the Commission made no adequate findings that the rates were unlawful in this respect. "All that the Milwaukee has done is to initiate a schedule which must be upheld as lawful unless adequate reasons are presented for setting it aside". *United States* v. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company*, 294 U. S. 499, 510.

There should be a reversal and the Commission's order should be perpetually enjoined.

J. E. Goggin,
William L. Hunter,
Carson L. Taylor,
Attorneys for Railroad Appellant.

A. N. Whitlock,
M. L. Bluhm,
Of Counsel.

April 7, 1947.

APPENDIX.

The Interstate Commerce Act, U. S. C. Title 49, provides:

Section 1(5) (a):

"Sec. 1. (5) All charges made for any service rendered or to be rendered in the transportation of passengers or property or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

Section 2:

"Sec. 2. That if any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered or to be rendered, in the transportation of passengers or property, subject to the provisions of this part, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

Section 3(1):

"Sec. 3. (1) It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect

whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description."

Section 15 (1):

"(1) That whenever, after full hearing, upon a complaint made as provided in section 13 of this part, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this part for the transportation of persons or property as defined in the first section of this part, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this part, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this part, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or col-

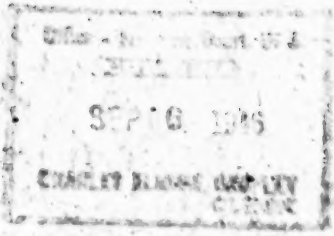
lect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed."

Section 15 (7):

"(7) Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of prop-

erty, the Commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after the date this amendatory provision takes effect, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible."

FILE COPY



No. 467

In the Supreme Court of the United States

OCTOBER TERM, 1946

AYRSHIRE COLLIERIES CORPORATION, ET AL., AND CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, APPELLANTS

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA

MOTION TO AFFIRM

In the District Court of the United States for the Southern District of Indiana, Indianapolis Division

Civil No. 1072

AYRSHIRE COLLIERIES CORPORATION, ET AL., PLAINTIFFS,

v.

UNITED STATES OF AMERICA, DEFENDANT.

Civil No. 1076

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, PLAINTIFF,

v.

UNITED STATES OF AMERICA, DEFENDANT.

MOTION TO AFFIRM

Appellee, pursuant to Rule 12, paragraph 3, of the Revised Rules of the Supreme Court of the United States, moves that the decree of the District Court be affirmed. This is a direct appeal from the final decree entered June 5, 1946, of a specially constituted district court of three judges established pursuant to the Urgent Deficiencies Act of October 22, 1913, dismissing appellants' complaints to set aside an order of

714945—46——1

the Interstate Commerce Commission.[1] Appeal was allowed on August 1, 1946, and appeal papers were served August 5, 1946.[2]

The Commission's order dated July 9, 1945, required the rail carriers participating in the transportation concerned to cancel certain proposed rates on bituminous coal from Indiana and Western Kentucky to points in Northern Illinois and to Beloit, Wisconsin, without prejudice to the establishment of rates on the basis approved in the Commission's report which is a part of the said order. The order further required the carriers to desist from practicing the unjust discrimination and the undue prejudice and preference found in said report to exist, and required them to publish, maintain and apply rates which will avoid and remove the said unjust discrimination and undue prejudice and preference. *Coal to Beloit, Wisconsin, and Northern Illinois,* 263 I. C. C. 179.

It is submitted that the appeal presents no substantial questions, and that the decree of the District Court should be affirmed without argument.

A somewhat extensive statement of the history of the rates involved is necessary in order to

[1] The two cases were consolidated by order of the Court. The Court made comprehensive Findings of Fact and Conclusions of Law, though writing no opinion.

[2] It does not appear that notice of appeal was served upon the Attorney General of Indiana, in accordance with the provisions of 28 U. S. C. 45a.

elucidate the legal issues in the case. The questions of law arising from the facts of the case are not novel or difficult. However, the history and character of the bituminous coal rate adjustment in the territory affected requires explanation in some detail.

The Commission's order was made in consolidated proceedings involving Investigation and Suspension Docket No. 5139, wherein Indiana interests protested against increased rates on bituminous coal from certain Indiana mines to Beloit, Wisconsin, and from Indiana and Western Kentucky to Rockford, Freeport, Dixon, and a number of other Illinois points north and west of Chicago; and No. 28881, wherein the Commission, upon its own motion but following a petition filed by certain rail carriers in Illinois, entered upon an investigation concerning the lawfulness of intrastate rates from Illinois mines to the Northern Illinois destinations involved.

The tariffs involved in the Investigation and Suspension proceeding were published by the participating carriers in purported compliance with the Commission's decision in *Fairbanks-Morse & Co.* v. *Alton & Southern Railroad,* 195 I. C. C. 365, 251 I. C. C. 181. In that case, the Commission found that rates to Beloit, Wisconsin, would be unduly prejudicial to Beloit and unduly preferential of Rockford, Illinois, to the extent that the Beloit rate was higher than the Rockford rate by more than 15¢. The railroads

involved chose to comply with the Commission's requirement of a 15¢ differential by increasing the rate to Rockford, rather than by reducing the rate to Beloit.

At the same time, moreover, the carriers proposed increases to Beloit, except that the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter referred to as the Milwaukee), proposed no changes in rates via its single line from the Brazil and Linton groups[1] in Indiana to Beloit, and the Southern Railway and the Algers, Winslow & Western Railway did not propose any changes in their rates from the Princeton group in Indiana to Beloit. No change was proposed from points in the Booneville group in Indiana (on the Southern), nor in rates from the Illinois groups to Beloit.

The Commission's order here under attack, however, would require the appellant Miiwaukee to increase its rates to the extent necessary to comply with the rate level prescribed in the Commission's order for all carriers.

In the opinion of the carriers, the rates to Rockford and other destinations in Northern Illinois have been lower than the general level of rates, as a result of intrastate rates prescribed by the Illinois Commerce Commission from Southern Illinois mines. In 1930 the Illinois

[1] "Groups" are areas within which every point of origin takes the same rate.

Commission required a reduction in intrastate rates to Rockford and certain other Northern Illinois destinations. The Interstate Commerce Commission on March 8, 1932, declined to require an increase restoring the previously existing higher intrastate rates unless and until the interstate rates from Indiana mines to the same destinations were also increased to a level more nearly commensurate with the general level of rates in the territory. *Intrastate Rates on Bituminous Coal in Illinois,* 182 I. C. C. 537, 550.

By schedules filed to become effective on December 23, 1932, the Milwaukee proposed to reduce its interstate rates, from mines on its line in the Brazil-Clinton and Linton-Sullivan groups in Indiana, to Rockford and other Illinois points. These reductions were comparable to those made in the intrastate rates from Illinois. The Interstate Commerce Commission suspended the Milwaukee schedules, but the Commission's order was held invalid by this Court. *Coal from Indiana to Illinois,* 197 I. C. C. 245; 200 I. C. C. 609; *United States* v. *Chicago, M., St. P. & P. Railroad Co.,* 294 U. S. 499 (1935). Accordingly the Milwaukee rates became effective in 1934, with the result that its single line rates were lower than joint line rates participated in by the Milwaukee between the same points. The expression "dual basis of rates" is employed in the Commission's report to describe this situation. (263 I. C. C. at 189, 214.)

Under the schedules involved in Investigation and Suspension Docket No. 5139, the so-called dual basis of rates would apply not only from the Brazil and Linton groups, as at present, but also from the Princeton group in Indiana; and would also be extended to apply to Beloit, in destination territory. In this respect the instant proposal differs from that which the Commission on March 13, 1939, approved in *Coal to Illinois and Wisconsin*, 232 I. C. C. 151, where proposed increases in the rates from Indiana and Western Kentucky to Northern Illinois points were found justified, but were never put into effect because the Illinois Commission disapproved a similar increase in intrastate rates from Southern Illinois. (263 I. C. C. at 182–3, 191, 213.)

The proposed schedules involved in I. & S. No. 5139 would increase the rate to Rockford from Southern Illinois to $2.25. This increase of 15 cents to Rockford would comply with the Commission's decision in the *Fairbanks-Morse* case, *supra*, since the existing Rockford rates are generally 30 cents lower than Beloit, and the 15-cent increase to Rockford would result in the 15-cent differential called for by the Commission's decision in that case.

But corresponding increases in the rates to Rockford from all groups in Indiana, Illinois, and Western Kentucky were also proposed, in order to preserve the established relationships between

the various points of origin for coal shipments. This adjustment would mean a 15¢ increase in the joint-line rate from Brazil to Rockford, making that rate $2.12; to Beloit the joint-line rate from Brazil would be 15¢ higher, or $2.27, an increase of 17¢ over the present rate of $2.10.

However, the proposed schedules contemplated no change in the Milwaukee's single-line rate from Brazil to Beloit. That rate at present is $2.10, and would remain at that figure; while the Milwaukee's single-line rate to Rockford, now $1.80 (or 30¢ less than Beloit), would be increased to $1.95, and thus would comply with the Commission's decision in the *Fairbanks-Morse* case, *supra*.

Thus the existing 17¢ disparity between the Milwaukee's single-line and joint-line rates from Brazil, now confined to the rates to Rockford and other Northern Illinois destinations, would under the proposed schedules, be extended so as to affect the rates to Beloit as well.

Similarly, the existing 12¢ disparity between the joint-line rates and the single-line rates of the Milwaukee and of the Illinois Central from the Linton group would be continued. But, furthermore, a disparity would be newly created from the Princeton group by the new schedules, since the joint-line rate to Beloit would be there increased from $2.27 to $2.32, while the existing rate of $2.27 would continue to apply from mines

on the Southern and on the Algers, Winslow & Western. Likewise no change would be made from Booneville, served only by the Southern. The present rate from there to Beloit is $2.30. (263 I. C. C. at 190.)

The Commission made findings that the rates which would be in effect if the proposed schedules were put in force would result in undue discrimination, preference, and prejudice in violation of Sections 2 and 3 of the Interstate Commerce Act, and approved rates which would be reasonable *per se*, and would result in fair and reasonable rate relationships between the various points of origin as well as between the Illinois, Indiana, and Kentucky groups. (263 I. C. C. 201, 203, 207, 217, 219.) Appropriate findings were also made with respect to the burden on interstate commerce resulting from the low intrastate rates in Illinois. (263 I. C. C. 217.)

Upon consideration of the foregoing facts, it is not difficult to dispose of the legal issues involved in this appeal. Appellants' first contention is that the District Court's decision is invalid because it was made by two of the three judges who heard the case, Judge Evans having become ill after the hearing. This contention is almost frivolous, since it is plain that the Court's decree was made in accordance with the statutory requirements of 28 U. S. C. 47. It is there expressly indicated that a decision may be reached

by a three-judge court if a "majority of said three judges" concur. The case having been duly heard by three judges, the decision concurred in by two of them is obviously as conclusive when the third judge fails to concur because of illness as it would be if his failure to concur were the result of his dissenting views.

Appellants' contention that the Commission was without jurisdiction is equally unsubstantial. This argument is based upon the assumption that the scope of the Investigation and Suspension proceedings in I. & S. Docket No. 5139 was confined to consideration of the new or changed rates contained in the tariffs under investigation in that proceeding. Appellants claim that the Commission had no authority to consider the lawfulness of previously established rates which were merely republished without change in the tariffs under investigation.

But from the very terms of the Commission's order of July 30, 1942, which instituted the investigation in I. & S. Docket No. 5139, it is clear that the scope of the investigation embraced all the rate schedules enumerated in that order. The schedules therein specifically named include the tariffs naming the Milwaukee single-line rates which that carrier proposed to republish without any increase. Those schedules also include the joint-line rates which the carriers involved pro-

pose to republish without change, as well as those which they propose to increase.

Section 15 (7) of the Interstate Commerce Act as amended (49 U. S. C. 15 (7)) empowers the Commission in an Investigation and Suspension proceeding, after full hearing, to make such an order as would be proper in a proceeding begun after a rate schedule had become effective. Section 15 (1) of the Act (49 U. S. C. 15 (1)), dealing with the Commission's power over rates which have become effective, authorizes the Commission, if it be of opinion that the rates are unlawful in certain respects therein enumerated (including unlawfulness arising from unjust discrimination or undue prejudice or preference), to determine and prescribe the rate thereafter to be observed and to make an order that the carrier "cease and desist from such violation * * * to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate * * * other than the rate * * * so prescribed." These statutory provisions[1] amply sustain the Commission's authority to make the order involved in this case. Numerous Commission and court decisions have held that in an Investigation and Suspension proceeding the Commission may consider the law-

[1] With respect to intrastate rates, such as the rates from Illinois mines involved in this case, the Commission derives its statutory power from Section 13 (4) of the Act (49 U. S. C. 13 (4)).

fulness of the existing rates as well as of the proposed schedule under suspension. *Akron, C. & Y. Railway Co.* v. *United States,* 22 F. 2 (d) 199, 203; *Advances in Rates, Western Case,* 20 I. C. C. 307, 314; *Lignite Coal from North Dakota,* 126 I. C. C. 243, 244–5; *Sioux City Terminal Railway Switching,* 241 I. C. C. 53, 73–4.

Furthermore, even if it were true that the Commission's order instituting the Investigation and Suspension proceeding had not specifically covered the rate schedules at issue, it is clear that appellants could not prevail upon so technical an objection. In the case of administrative tribunals such as the Commission, it has always been held by the courts that strict rules of pleading and evidence are not applicable, and an order made after a fair hearing doing substantial justice to the parties will not be set aside by reason of a defect which might have constituted "variance" at common law. *Smith* v. *Interstate Commerce Commission,* 245 U. S. 33; *New York Central Railroad Company* v. *Interstate Commerce Commission,* 168 Fed. 131, 138–9; *Chesapeake & Ohio Railway Company* v. *United States,* 11 F. Supp. 588, 592; *Alton & Southern Railroad* v. *United States,* 49 F. (2d) 414, 429–30; *Pennsylvania Railroad Company* v. *United States,* 288 Fed. 88, 91; *Spiller* v. *Atchison, Topeka & Santa Fe Railway Company,* 253 U. S. 117, 131–2.

Not only is it true here, as in the *Spiller* case, that the Commission did not act upon evidence of

which the appellants were not cognizant and to which they had no opportunity to reply, but appellants' present contention that the Commission was without authority to consider the lawfulness of the existing rates amounts to a complete reversal of their position in the proceeding before the Commission.

Before the Commission appellants urged that the Commission pass upon the existing rates and establish a lawful adjustment of rates and rate relationships affecting all the mines in Illinois, Indiana, and Western Kentucky. The testimony offered by appellants' witnesses, the exhibits, briefs, exceptions to Examiner's proposed report, and other documents in the record are replete with statements showing that petitioners invited the Commission to decide the issues which it did decide.[5] In the exceptions to the Examiner's proposed report filed by the Coal Trade Association of Indiana the following language occurred:

> In these proceedings, under the issues involved in the Investigation and Suspension case and the 13th Section case, the present record is sufficient for the Commission to determine the propriety of the level of the rates from the mines in Illinois and Indiana to these destinations in northern Illinois and Beloit, and the differentials to apply as between the mine origin groups in said States in the movement of coal to such destinations. (P. 17.)

[5] Tr. 1793–4, 1845–50, 1857–8, 1874–6.

Further on in the same document the following appears:

> The jurisdiction of the Commission under its investigation and suspension powers and under its powers contained in the 13th section of the Act are entirely adequate to dispose of all of the issues here involved on this present record, a record of over 2,000 pages of evidence and over 150 exhibits.
>
> This record shows the rate from every origin group in Illinois and every shipping group in Indiana to this territory. * * * The rates and distances from every competitive group within the State are shown in this record. The record shows the transportation conditions within Illinois and from Indiana to these destinations to be the same. There is no evidence omitted from this record which is necessary for a decision of these issues. Why postpone again to a future proceeding, whether by way of arbitration or by way of some hitherto unknown type of proceeding before this Commission, the question of the final disposition of the issue of the proper relationship and measure of the rates from these two competing sets of origin groups in Illinois and Indiana to this important destination territory? As pointed out in the Report, there has been almost constant litigation before this Commission since the intrastate rates in Illinois were reduced in 1930. Now after fourteen years we have a record and issues under which a final

> order can be made settling the whole matter. We urge that the Commission exercise the jurisdiction conferred on it by the Act, and enter an order based on the facts, removing once and for all the unlawful discrimination which the present intrastate rates within Illinois to the destinations involved subject interstate commerce in coal from Indiana to those same destinations, and remove the unlawful prejudice to which the Indiana producers are subjected and the unlawful preference now enjoyed by the Illinois producers shipping to such destinations, and that there be no further postponement in making effective within this territory a rate adjustment that is fair and reasonable to all concerned, a rate adjustment that protects the interests of the consumer as well as of the producers of coal in this territory. (P. 111–12.)

Appellants' dissatisfaction with the Commission's procedure arose only when the Commission's decision rejected appellants' recommendations regarding the rate relationships to be established. Appellants wished the rates of the other carriers to be adjusted to conform with those of the Milwaukee, rather than that the Milwaukee's rates be brought into conformity with those of the other carriers involved. In other words, appellants merely wish the Court to substitute its judgment for that of the Commission in dealing with a troublesome question

of rate making. This, of course, would be contrary to the established principles regarding the respective functions of the Commission and the courts in matters of rate making. *Virginian Railway Company* v. *United States,* 272 U. S. 658, 665; *Mississippi Valley Barge Line* v. *United States,* 292 U. S. 282, 286–7.

Examination of the Commission's painstaking report shows that it considered the pertinent factors and made appropriate findings. *B. & O. Railroad Company* v. *United States,* 305 U. S. 507, 524; *C. B. & Q. Railroad Company* v. *United States,* 60 F. Supp. 580, 584. It was proper for the Commission in order to determine the appropriate rates to be charged, to make comparisons with other similar rates, as well as to consider the distances and transportation conditions involved. *St. Louis Southwestern Railway Company* v. *United States,* 245 U. S. 136, 145; *Youngstown Sheet & Tube Company* v. *United States,* 295 U. S. 476, 480; *United States* v. *Northern Pacific Railway,* 288 U. S. 490, 500; *Chicago, Rock Island & Pacific Railroad Company* v. *United States,* 274 U. S. 29, 32.

In fact, the Commission in the order complained of was merely complying with the intimations contained in this Court's opinion in *United States* v. *Chicago, Milwaukee, St. Paul & Pacific Railroad Company,* 294 U. S. 499, 509–10, that the Commission should establish a comprehensive adjustment of the entire coal-rate struc-

ture in the area affected. Controversies of long standing regarding coal rates in this area have been the subject of "piecemeal action" from time to time over a long period of years; but the Commission had never prescribed fair and reasonable rate relationships between the competing Illinois, Indiana, and Kentucky groups, as well as between the various mines and points of origin within those groups. This Court in the *Milwaukee* case found that the Commission had not "adjudged the fairness of the relation" between rates from Illinois and Indiana. The Court admonished the Commission that "the whole situation is subject to the power of the Commission" and that the Commission should exercise its power to "conduct a comprehensive inquiry into the rates of all the lines within the area of controversy," in which it "may fix the fair relation between one line and another, and may build the structure of the rates accordingly."

What the Commission has done in its present order is merely to carry out the directions given by this Court in that case.

Another contention urged by appellants is equally unsound. Relying upon *Texas and Pacific Railway Company* v. *United States*, 289 U. S. 627, 650, appellants claim that the Commission's order is invalid because of the Milwaukee's alleged lack of effective control over the joint-line rates. They also claim that the order is invalid because it does not leave the carriers an

alternative to remove the discrimination either by lowering the higher rates or by increasing the lower rate.

A complete answer to this contention is found in the fact that the order in the present case was one made under Section 15 of the Act, and not under Section 3. The rule relied upon by appellants is applicable only to a Section 3 order. This distinction was recognized in the *Texas and Pacific* case itself;* and also was clearly explained in *Youngstown Sheet & Tube Company* v. *United States*, 295 U. S. 479.

Moreover, in fact, the Milwaukee does effectively participate in the rates found to be unlawful and has control over these rates. The Milwaukee was under no obligation to participate in the higher joint-line rates, but voluntarily chose to do so. It cannot escape responsibility for unlawfulness thus created by the establishment of a dual basis of rates as a consequence of its own action. Such participation resulted, among other things, in undue preference to shippers and origins on its single line, for which the Milwaukee is clearly responsible. Furthermore, the Milwaukee cannot seriously contend that it does not control the rates over its own line; hence, in fact, it lies within the Milwaukee's power, by adjusting its own single-line rates to eliminate the existing discriminations. It is

* See 289 U. S. at 650, fn. 39.

only the attitude of the Milwaukee that prevents unanimity among all the carriers themselves.

But the Milwaukee argues that its initiative in rate making must be respected. However, while it is true that carriers have the initiative in rate making,[1] it is equally true that such carrier-made rates are subject to the regulatory powers conferred by law upon the Commission. Where discrimination or undue preference or prejudice is found to exist, the Commission's power to prescribe rates comes into play. There can be no doubt with respect to the existence of unjust discrimination and undue preference and prejudice in this case, since the difference between the Milwaukee's single-line rates and its joint-line rates do not reflect any substantial difference in transportation conditions. The Commission found that:

'The transportation conditions over the single-line routes of the Milwaukee and the Illinois Central do not differ materially from those over the joint-line routes to the same destinations from other mines in the same group, in many of which latter routes, as stated, the Milwaukee and the Illinois Central participate. There is no important difference in the average distances over

[1] *United States* v. *Illinois Central Railroad Company*, 263 U. S. 515, 522; *Arizona Grocery Company* v. *Atchison, Topeka & Santa Fe Railroad Company*, 284 U. S. 384; *United States* v. *Chicago, Milwaukee, St. Paul & Pacific Railroad Company*, 294 U. S. 499, 506.

those respective routes. Normally, coal sales turn on a price difference of as little as a few cents a ton. Plainly, therefore, only by the establishment and maintenance of a single-rate basis from each of these coal-rate districts can unjust discrimination and undue prejudice be avoided. (263 I. C. C. at 195.)

For the foregoing reasons, it is clear that this appeal presents no substantial questions. It is, therefore, respectfully submitted that the judgment of the District Court should be affirmed.

(Signed) J. Howard McGrath.
J. HOWARD MCGRATH,
Solicitor General.

(Signed) Daniel W. Knowlton.
DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission.

AUGUST 1946.

I certify that a copy of the foregoing motion to affirm was this day mailed to the counsel for appellants. This 16th day of August 1946.

(Signed) Edward Dumbauld.
EDWARD DUMBAULD,
Special Assistant to the Attorney General.

U. S. GOVERNMENT PRINTING OFFICE: 1946

FILE COPY

FILED
APR 8 1947

No. 467

In the Supreme Court of the United States

OCTOBER TERM, 1946

AYRSHIRE COLLIERIES CORPORATION, A CORPORATION, ET AL., AND CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, APPELLANTS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., APPELLEES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

INDEX

	Page
Opinions below	1
Jurisdiction	2
Statutes involved	2
Questions presented	2
Statement	3
Proceedings in the Lower Court	27
Summary of argument	28
Argument	34
I. The decision of the district court is not rendered invalid because of the fact that one of the three judges who heard the cause was unable, because of illness, to participate in the final determination	34
II. The Commission's order was within its statutory authority	40
(1) The Commission's authority extended to the existing rates and relationships	40
(2) The Commission, in dealing with the rates to Beloit, acted well within its authority	50
III. The Commission's order is supported by full findings, rational conclusions and ample evidence	55
IV. The Commission did not exceed its authority in approving and prescribing the adjustment of rates to be established	74
Conclusion	94
Appendix: Pertinent provisions of the Interstate Commerce Act	95

CITATIONS

Cases:

Advances in Rates—Western Case, 20 I. C. C. 307	30, 44, 47
Akron, C. & Y. Ry. Co. v. *United States*, 22 F. 2d 199	30, 44
Board of Trade of Kansas City v. *United States*, 314 U. S. 534	73
Chemical Lime Co. v. *Bellefonte Cent. R. R.*, 136 I. C. C. 333	7
Coal from Indiana and Illinois, 197 I. C. C. 245, 200 I. C. C. 609	15
Coal to Illinois and Wisconsin, 232 I. C. C. 151	13, 15
Coal Rates from Oak Hills, Colo., 30 I. C. C. 505	53
Fairbanks-Morse Case, 251 I. C. C. 181	57
Fairbanks-Morse & Co. v. *Alton & S. R.*, 195 I. C. C. 365	12, 17, 33, 75
Galveston Com. Assn. v. *Galveston, H. & S. A. Ry. Co.*, 160 I. C. C. 345	86

Cases—Continued. Page

Georgia Commission v. *United States*, 283 U. S. 765 89
Hitchman Coal & Coke Co. v. *B. & O. R. R.*, 16 I. C. C. 512 7
Houston, E. & W. Texas Ry. v. *United States*, 234 U. S. 342 ..... 85, 88, 90
Idaho Comm. v. *O. S. L. R. R.*, 33 I. C. C. 103 7
Illinois Coal Traffic Bureau v. *Ahnapee & W. Ry. Co.*, 204 I. C. C. 225 9
Illinois Commerce Comm'n. v. *United States*, 292 U. S. 474 7
Interstate Commerce Comm. v. *Inland Waterways Corp.*, 319 U. S. 671 ..... 33, 87
Intrastate Rates on Bituminous Coal in Illinois, 182 I. C. C. 537 ..... 11, 12, 15
Jefferson Island Salt Mining Co. v. *United States*, 6 F. 2d 315 90
Lignite Coal from North Dakota, 126 I. C. C. 243 ..... 30, 45
Louisville & Nashville R. R. Co. v. *United States*, 282 U. S. 740 90
Lumber Co. v. *St. L. I. M. Ry.*, 33 I. C. C. 33 7
New York Central & H. R. R. Co. v. *I. C. C.*, 168 Fed. 131 50
New York Harbor Case, 47 I. C. C. 643 7
Ohio v. *United States*, 6 F. Supp. 386, affirmed, 292 U. S. 498 ..... 7, 37, 73
Oregon-Washington R. & Nav. Co. v. *United States*, 47 F. 2d 250, affirmed, 288 U. S. 14 37
Scandrett v. *United States*, 32 F. Supp. 995, affirmed, 312 U. S. 661 ..... 33, 90
Sioux City Terminal Ry. Switching, 241 I. C. C. 53 ..... 30, 45
Southwestern Coal Asso. v. *A. W. Ry.*, 89 I. C. C. 73 7
St. Louis S. W. Ry. Co. v. *United States*, 245 U. S. 136 84
Stratton v. *St. Louis S. W. Ry.*, 282 U. S. 10 ..... 37, 38
Texas & Pacific Ry. Co. v. *United States*, 289 U. S. 627 ..... 33, 74, 76, 78, 81, 82, 85
Transportation of Wool, In re., 23 I. C. C. 151 7
United States v. *American Sheet & Tin Plate Co.*, 301 U. S. 402 84
United States v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499 ..... 15, 80, 93
United States v. *Louisiana*, 290 U. S. 70 89
United States v. *Trucking Co.*, 310 U. S. 344 32
Waukesha Lime & Stone Co. v. *C. M. & St. P. Ry.*, 26 I. C. C. 515 7
Wisconsin R. R. Comm. v. *C., B. & Q. R. R. Co.*, 257 U. S. 563 85
Youngstown Sheet & Tube Co. v. *United States*, 295 U. S. 476 ..... 33, 79, 80, 90

Statutes involved: Page.
Hepburn Act of 1906, 34 Stat. 594 83
Interstate Commerce Act, Part I:
Section 2 95
Section 3 (1) 85, 95
Section 12 85
Section 13 (4) 85, 88, 89
Section 15 (1) 29, 43, 81, 82, 83, 84, 88, 96
Section 15 (7) 30, 42, 46, 82, 97
Section 16 (8) 85
Urgent Deficiencies Act, 38 Stat. 208, 220, 28 U. S. C. 47 ..... 28, 34, 39
Judicial Code, Sec. 266 ..... 38, 39
28 U. S. C. 212 36
Miscellaneous:
59 Cong. Rec. 141–143 89

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 467

AYRSHIRE COLLIERIES CORPORATION, A CORPORATION, ET AL., AND CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, APPELLANTS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., APPELLEES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

The report of the Interstate Commerce Commission herein involved (R. 164) is reported in 263 I. C. C. 179. The findings of fact and conclusions of law of the District Court (no opinion was filed) are set forth at R. 108.

JURISDICTION

The final decree of the District Court (R. 111) was entered June 5, 1946, and the appeal was allowed August 1, 1946 (R. 119). Probable jurisdiction was noted, October 21, 1946 (R. 1675). The Court's jurisdiction rests on the Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210, 219, 220; 28 U. S. C. 45 and 47a) and section 238 of the Judicial Code as amended by the Act of February 12, 1925 (c. 229, 43 Stat. 936, 938, par. (4), 28 U. S. C. 345).

STATUTES INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix.

QUESTIONS PRESENTED

1. Whether, after a hearing before a three-judge district court, a majority of the three judges may render a decision, the third judge being absent due to illness.

2. Whether, in an Investigation and Suspension proceeding involving certain rate schedules filed by carriers, the Interstate Commerce Commission may consider the lawfulness of the previously existing rates, republished in such schedules, as well as of the new rates proposed therein.

3. Whether the facts of record herein (disclosing, among other things, that a rail carrier maintained single-line rates, applicable to move-

ments exclusively over its own rails, which were lower than joint-line rates voluntarily maintained by it at the same time between the same destinations and origin-groups in conjunction with other carriers) warranted findings of discrimination and preference empowering the Commission to make its order prescribing rates.

STATEMENT

These are direct appeals from a final decree (R. 111) of a specially constituted district court dismissing as without merit two complaints (consolidated for hearing, R. 54), seeking the enjoining and setting aside of an order of the Interstate Commerce Commission entered in a proceeding entitled Investigation and Suspension Docket No. 5139, *Coal to Beloit, Wis., And Northern Illinois.* The appellants in one of the cases are certain companies and individuals engaged in mining coal in Indiana and the Coal Trade Association of Indiana, and the appellant in the other cause is the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

The Commission proceeding R. 3, an I. & S. proceeding under section 15 (7) of the Interstate Commerce Act, was instituted July 30, 1942, on protest, or complaint, of Indiana coal-shipping interests asking for investigation of the lawfulness of rates, proposed by certain railroads, on bituminous coal, in carloads, from mines in In-

diana to Beloit, Wis., and certain northern Illinois destinations, and from mines in western Kentucky to the Illinois destinations. The rates proposed were suspended by the Commission for the statutory period and thereafter by the railroads voluntarily until disposition of the proceeding. The I. & S. proceeding (R. 4) was heard together with a proceeding under section 13 (3) and (4) of the Act, No. 28881, *Bituminous Coal Rates Within Illinois,* which was instituted upon petition of the principal railroads operating in Illinois wherein they alleged that the intrastate rates on bituminous coal, in carloads, from mines in Illinois to the same northern Illinois destinations caused undue preference and prejudice as between persons and localities in intrastate commerce on the one hand, and interstate commerce on the other, and unjust discrimination against interstate commerce. The two proceedings and related proceedings of the Illinois Commission (R. 166) were heard under the cooperative plan agreed upon between the Commission and the various State commissions. In accordance therewith, representatives of the Illinois Commission sat with the Commission's examiner at the hearings and two members of that Commission joined the members of the Interstate Commerce Commission in hearing the oral argument. Numerous traffic bureaus, coal producers, chambers of commerce, and shipper associations were represented at the hearings (R. 166).

The Commission report, issued July 9, 1945 (R. 164), embraced its determinations and findings in both I. & S. No. 5139 and in No. 28881. Its order entered in the I. & S. proceeding (R. 222) required the respondent railroads to cancel their schedules of proposed rates, without prejudice to the establishment of rates on the bases approved in the report, and further that they desist from practicing the unjust discrimination and undue prejudice and preference found in the report to exist and publish, maintain and apply rates which will avoid and remove such unjust discrimination and undue prejudice and preference. The order entered in No. 28881, though not under attack, is closely related to the order in I. & S. No. 5139. It required the railroads, respondents in that proceeding, to desist from practicing the unjust discrimination against interstate commerce found in the report to exist and to establish, maintain and apply, for the intrastate transportation of coal involved, rates no lower than the approved rates or on the rate bases as indicated in said report.

Bituminous coal is produced in great quantities in the coal fields of Indiana, Illinois, and western Kentucky, collectively, known as the midwestern field, and a natural market for the production is the section of the country north and west thereof, including Illinois, Wisconsin, and Iowa. In each of the origin states of Indiana and Illinois there

are several producing areas which have long been grouped for rate-making purposes. In Indiana, the most northerly is the group known as Brazil-Clinton (hereinafter called the Brazil). The Indiana groups south thereof are, in the order of their distances, the Linton-Sullivan (hereinafter called the Linton), the Princeton-Ayrshire (hereinafter called the Princeton), and the Boonville group, located near the southern boundary of the state. In Illinois, the most northerly mine group is that known as the Northern Illinois. The Illinois groups south of the Northern Illinois group are, among others, the Fulton-Peoria, the Springfield, the Belleville, and the Southern Illinois, the latter group being located in the southeastern part of the state and not far from Kentucky and southwestern Indiana. In Kentucky, the mine group known as the Western Kentucky lies east and in part south of the Southern Illinois group and just south of the Boonville group in Indiana.

In the fixing and adjustment of rates on coal and building of coal rate structures, a pronounced characteristic has been the establishment of "group rates" whereby all mines within a particular area—often large in extent—are accorded the same rates to the same consuming destinations. While, due to differences in location in an origin area, such grouping of mines for rate purposes at times entails a considerable disregard of comparative distances, its justification is, similarly

as in cases of other groupings applying to "areas containing natural resources," that it operates to encourage competitive production,[1] thus stimulating a more even development of the area and fuller production, all in the interest of consumers,[2] the traffic of the railroads[3] and of the producers in an origin group area generally.[4] Along with the group method of making rates, another marked characteristic of coal rate structures has been that of rate differentials, that is, differences in the rates applying from the respective origin groups in the adjustment. These differentials are usually constructed with reference to a particular base group.[5]

As involved in the Commission's "interstate rate proceeding", I. & S. No. 5139,[6] the origin mine groups are, as far as requiring specific men-

[1] *In re Transportation of Wool, etc.*, 23 I. C. C. 151, 164; *Waukesha Lime & Stone Co.* v. *C., M. & St. P. Ry.*, 26 I. C. C. 515, 518; *Idaho Comm.* v. *O. S. L. R. R.*, 33 I. C. C. 103, 106.

[2] *Lumber Co.* v. *St. L. I. M. Ry.*, 33 I. C. C. 33, 37; *Hitchman Coal & Coke Co.*, v. *B. & O. R. R.*, 16 I. C. C. 512, 520; *Southwestern Coal Asso.* v. *A. W. Ry.*, 89 I. C. C. 73, 85.

[3] *Chemical Lime Co.* v. *Bellefonte Cent. R. R. et al.*, 136 I. C. C. 333, 341.

[4] *New York Harbor Case*, 47 I. C. C. 643, 712; cf. generally *Illinois Commerce Comm.* v. *United States*, 292 U. S. 474, 486, and cases cited.

[5] Cf. *Ohio* v. *United States*, 292 U. S. 498, 502.

[6] Although the I. & S. proceeding and the intrastate proceeding, No. 28881, are dealt with and decided under separate headings in the report, the issues in the two proceedings are so closely related that the discussion of rates and differentials is necessarily overlapping.

tion, the groups above referred to in Indiana, Illinois, and western Kentucky and the destinations of the traffic are Rockford, Freeport, Dixon, and other points in northern Illinois and Beloit, Wisconsin, about 18 miles north of Rockford. The Brazil is the base group in Indiana on coal traffic to those destinations and to points in the north and northwest generally. From the other Indiana groups the rates, expressed in cents per net ton, are made certain differentials higher than those from the Brazil group. In Illinois, the Springfield group is the largest in area and the southern Illinois group the largest in production. Formerly the latter was regarded as the base Illinois group, but, in recent decisions, the Commission has used the Fulton-Peoria group, which lies in northwestern Illinois and has materially increased its production, as the base group from Illinois mines to all points in Iowa and to certain points in southern Wisconsin (R. 170). To destinations in the north and northwest, the rates from the Fulton-Peoria group in Illinois are generally 30 or 35 cents under those from the Springfield group and 60 or 70 cents under those from the southern Illinois group "with varying differentials between the other Illinois groups" (R. 170). "Rates from the respective Indiana groups [Brazil, Linton, Princeton, and Boonville groups] 30, 20, 13, and 10 cents under southern Illinois to the Northwest, that is, northeastern

Iowa, southeastern Minnesota, and southern Wisconsin, including Beloit, were approved in 1934 in *Illinois Coal Traffic Bureau* v. *Ahnapee & W. Ry. Co.*, 204 I. C. C. 225, and those differences, referred to by the Indiana shippers as the standard differentials, still prevail to practically all of that area" (R. 170).

For some years prior to 1930, the differences, or differentials, in rates from the several Indiana groups under those from southern Illinois which, as above stated, were approved by the Commission, and still apply, on traffic to destinations in the regions specified, including Beloit, Wisconsin, applied also on traffic to most of the northern Illinois destinations (R. 176). This, however, was not true as to the particular destinations of Rockford, Freeport and Dixon, the principal coal consuming points in the northern Illinois destination territory involved. In the adjustments of rates to those destinations prior to 1930 as well as subsequently, no settled differentials had been observed. Taking Rockford as illustrative, during a 15-year period prior to 1925, the group differentials were frequently changed and in no case corresponding to the so-called standard differentials; and in July of that year, as the result of an adjustment by the railroads the rates to that detination from the repective Indiana groups (Brazil, Linton, Princeton and Boonville) were made 30, 25, 18, and 15 cents under the

rates from the southern Illinois group to the same point. In 1930, the Illinois Commission ordered reductions in the intrastate rates on coal to the destinations above named and certain others in Northern Illinois, including a reduction from the southern Illinois group to Rockford of 17 cents. As a result of the latter reduction on traffic to Rockford the differences in the rates from the three most northern Indiana groups under those from the southern Illinois group were changed to 13 cents from Brazil, 8 cents from Linton, and 1 cent from Princeton, and the rates from the Boonville group became 2 cents over those from the southern Illinois group. (R. 176.)

In addition to effecting the changes above indicated in the rate relations of the Indiana and Illinois mine groups as origin groups producing and shipping coal to Rockford and the other destinations, the State Commission's order brought about substantial changes in the rate relations of Rockford and the other northern Illinois points, on the one hand, and Beloit, Wis., on the other, as consignee and consumer destinations of the traffic. Again taking Rockford as illustrative, under the State Commission's order, the rate from the southern Illinois group to that destination was reduced "from $2.17 to $2.00, or 75 cents less than the rate from the same group to Beloit, 18 miles north of Rockford, and the rate from

the Fulton-Peoria group to Rockford became 42 cents less than that to Beloit" (R. 167).

Following the reduction in intrastate rates pursuant to the Illinois Commission's order, the Interstate Commission, on petition of railroads operating in Illinois, instituted, under section 13 (3) and (4) of the Act, an investigation of the lawfulness of the intrastate rates so reduced and established. In its report in that proceeding, *Intrastate Rates on Bituminous Coal in Illinois,* 182 I. C. C. 537, the Commission, in dealing with the rates from the Illinois groups to the northern Illinois destinations, found (p. 549) that they were "well below the reasonable level of rates in this territory," but since it considered that the interstate rates from the Indiana groups to the same destinations were also below that level, it declined to order an increase in the Illinois intrastate rates unless and until the interstate rates from Indiana were raised to a level more nearly commensurate with the general level of rates in the territory (R. 168, 176).

Subsequently, in a complaint case involving the rates from Indiana, Illinois and western Kentucky to Beloit, Wis. (just north of Rockford), Division 2 of the Commission found that the rates were not unreasonable, that is, not excessive, but that they were unduly prejudicial to Beloit and preferential of Rockford to the extent they exceeded the rates from the same origins to Rockford by more than

25 cents. *Fairbanks-Morse & Co.* v. *Alton & S. R.*, 195 I. C. C. 365 (R. 167). The accompanying order for removal of the discrimination permitted compliance by the railroads, not only by reducing the rates to Beloit, but by the alternative method of increasing the rates from the same origins to Rockford; and, judged by the Commission's findings in *Intrastate Rates on Bituminous Coal, supra,* the latter rates were at a level well warranting an increase. However, the rates from the Illinois groups to Rockford—the intrastate rates—could not be increased because they had been prescribed as maxima by the Illinois Commission; and, to have increased the rates from the Indiana groups to Rockford without similar increases from Illinois, would have been unwarranted. Accordingly, compliance was made with the order by reducing the rates to Beloit (R. 168). On further hearing, 251 I. C. C. 181, the Commission affirmed generally its findings that the rates involved were unduly prejudicial to Beloit and preferential of Rockford but it changed the relation prescribed from 25 to 15 cents, by finding that the discrimination shown existed to the extent that the rates to Beloit exceeded the Rockford rates by more than 15 cents (R. 168).

The Commission proceeding herein involved, I. & S. No. 5139, had its inception in the above findings and accompanying order on rehearing in the *Fairbanks-Morse case, supra.* Since the rail-

roads had, as above stated, complied with the first order in the case by a reduction in the rates to Beloit, and one observing the 25-cent relation, and, since they considered that the rates, as generally involved, that is, the rates, not only to Beloit, but to Rockford and nearby related destinations in northern Illinois, were all at a level considerably below the general level of rates in the territory, their schedules, filed and suspended in I. & S. No. 5139, proposed increases generally in the rates to those destinations which, while conforming to the 15-cent relation prescribed, would at the same time place the rates as a whole on a level more nearly commensurate with the general level of interstate rates in midwestern territory. (R. 168, 175.) [7]

[7] In a proceeding decided shortly before its decision on rehearing in the *Fairbanks-Morse case*, *supra*, the Commission approved increases in the rates on coal from Indiana and western Kentucky to the northern Illinois points which, with certain exceptions, were substantially the same as the rate increases proposed in I. & S. No. 5139. *Coal to Illinois and Wisconsin*, 232 I. C. C. 151. A similar revision was proposed by the railroads at that time in the intrastate rates from the Illinois groups to northern Illinois destinations, which, however, was found unjustified by the Illinois Commission. Because of the maladjustment that would result, the railroads were unwilling to make effective the interstate rates proposed and approved without making effective the revision in intrastate rates proposed, and, accordingly, they petitioned the Interstate Commission to enter upon an investigation under section 13 (4) of the Act of the lawfulness of the intrastate rates from the Illinois origins to the northern Illinois destinations. The

The rate increases proposed ranged in amounts from 5 to 17 cents from the Indiana groups and approximately the same from the Illinois groups[8] to Rockford and the other destinations in northern Illinois. To Beloit, Wis., no increase was proposed in the rates from mines on the Milwaukee and certain other carriers serving the Indiana groups. With that exception the rates to Beloit from the Indiana mines were proposed to be increased by 17 cents from the Brazil group and 12 cents from the Linton and Princeton groups. No change was proposed in the rates from the Illinois groups to Beloit.[9] (R. 171.) The rate revision proposed by the railroads was, however, "greatly complicated by the insistence of the Milwaukee upon a so-called dual basis of rates from the Brazil and Linton groups, which under the proposal would be extended also to the Princeton group on traffic to Beloit" (R. 170).

Commission instituted the investigation, but later, upon request of the railroads, discontinued the proceeding and, by special permission, authorized cancellation of the schedules proposed in *Coal to Illinois and Wisconsin*, *supra*.

[8] Increases in the Illinois intrastate rates to a level commensurate with the reasonable interstate level in midwestern territory were sought and authorized (R. 198) in No. 28881, together with I. & S. 5139, and decided in the same report.

[9] In Appendix A to the Commission's report (R. 213), the existing and proposed rates from the Indiana and Illinois groups to Beloit and 12 representative destinations in northern Illinois are shown together with the rates to most of those points approved in *Coal to Illinois and Wisconsin*, *supra*.

Following the 1930 reduction in Illinois intrastate rates and the railroads' failure, in *Intrastate Rates on Bituminous Coal, supra,* to bring about the reestablishment of the former intrastate rates on coal to the Northern Illinois destinations, the Milwaukee, which serves only the Brazil and Linton groups and only certain mines in those groups, proposed to reduce by 17 cents its single-line rates from those mines to Rockford and Freeport and certain intermediate points in northern Illinois. The Commission, in *Coal from Indiana and Illinois,* 197 I. C. C. 245, 200 I. C. C. 609, found the proposed adjustment unjustified and ordered its cancellation. In *United States* v. *Chicago, M., St. P. & P. R. Co.,* 294 U. S. 499, this Court held that the order was invalid for the reason, *inter alia,* that it was not supported by adequate findings; and the proposed rates became effective in 1934. (R. 177.)

In 1936 the Milwaukee increased its single-line rates from the Linton group to Rockford and Freeport by 5 cents, so as to make the differential Linton over Brazil on its line 10 cents. Subsequently, the Illinois Central met the Milwaukee's action by making like reductions in its single-line rates from the mines on its line in the Linton group to Rockford, Freeport and other destinations in northern Illinois. (R. 177.) Of the 30 mines comprising the Brazil group 4 are on the

line of the Milwaukee, and of the 31 mines comprising the Linton group 9 are on the line of the Milwaukee and 4 on the line of the Illinois Central. But, while these two railroads do not, as origin carriers, serve the other mines in the Brazil and Linton groups, in connection with such of the traffic from those mines as moves to the consuming area here involved, they figure importantly as destination carriers and as parties to many joint rates (R. 180, 181). Nevertheless, the reductions made by the Milwaukee and Illinois Central in the rates applying from mines on their lines were not accorded to the other mines in the two groups but, on the contrary, the rates from the latter to the destinations in northern Illinois were continued and maintained at the much higher level.[10] And, since the rate increases to those destinations, proposed by the tariff schedules before the Commission in I. & S. No. 5139, were generally the same in amounts from all of the mines in the two groups, including those on the lines of the Milwaukee and Illinois Central, the dual basis of rates, as then in effect, was, by such schedules, proposed to be continued (R. 182).

To Beloit, Wis., the existing rates from all the mines in the Brazil and Linton groups were the

[10] Except that from certain mines in the Brazil and Linton groups to a few destinations in northern Illinois the rates were still higher than the group rates. This was also true of certain mines in the Princeton group. In those instances the proposed rates were also higher than the group rates tion. (R. 182.)

same, but by the tariff schedules before the Commission in I. & S. No. 5139, the proposed dual basis of rates to Rockford and the other northern Illinois destinations reached by the Milwaukee was proposed to be extended to Beloit also. Since in connection with the rate increases proposed it was necessary to observe the 15-cent maximum spread, or relation, Beloit over Rockford, prescribed in the *Fairbanks-Morse* case, *supra,* the schedules of proposed rates were adjusted so as in all cases to conform to that requirement. But, while, on the one hand, the adjustment as worked out for the Brazil and Linton groups, as such, resulted in substantial increases in the group rates [11]

[11] In distinguishing the group rates from the rates applying from mines on the Milwaukee or Illinois Central and over their respective lines to destinations, the Commission's report (R. 177) refers to the former as joint-line rates and to the latter as single-line rates. Seven railroads serve the Brazil group and six serve the Linton group, but of those originating carriers, none, except the Milwaukee and Illinois Central, reaches with its own lines Rockford or other of the northern Illinois destinations, and none, except the Milwaukee, reaches Beloit. Consequently, save for the rates over the single-line routes of the Milwaukee and Illinois Central (which latter serves the Linton group only) the rates from the two mine groups were rates over joint-line routes. Of the 12 representative destinations in northern Illinois, the Milwaukee reached 5 and the Illinois Central 4 and those carriers were parties to the said joint-line routes and rates, existing and proposed, to the destinations on their respective lines. From the mines in the groups other than those from which its single-line rates apply to Beloit, the Milwaukee was party to the joint-line routes and rates, existing and proposed, to that destination. (R. 180, 181.)

to Beloit as well as those to Rockford, on the other hand, in the case of the Milwaukee's single-line rates from the Brazil and Linton mines on its line, the requirement of observing the 15-cent relation was met by a proposal to increase by 15 cents the rates to Rockford without any increase in the rates to Beloit. Under the Milwaukee's existing adjustment of single-line rates from the latter mines, the rates to Rockford, as reduced by that carrier below the group rates, were 30 cents lower than its rates to Beloit, and, accordingly, since its proposal was to increase the Rockford rates by 15 cents only; this permitted no increase in the Beloit rates if the 15-cent maximum spread, Beloit over Rockford, was to be observed. (R. 177, 181.) The net result, however, was that it was proposed to accord the Brazil and Linton mines on the line of the Milwaukee rates lower to Beloit by 17 and 12 cents, respectively, than accorded to the other mines in the two groups (R. 180, 181).

By the tariff schedules before the Commission, it was also proposed to establish a dual basis of rates to Beloit from the Princeton group. The group rate to Beloit was to be increased 12 cents but with the exception that from mines on the Southern and the Algers, Winslow & Western no increase was to be made. As for the Boonville group, which was served by the Southern only and which the Commission concluded should be com-

bined with the Princeton group (R. 171, 178), no increase in the rates from the mines therein to Beloit was proposed (R. 171).

After setting out in its report the facts in respect of the railroads' proposal to continue the dual basis of rates from the Brazil and Linton groups to northern Illinois destinations and to extend such basis also to the rates applying to Beloit, Wis., not only from those two groups but from all Indiana groups, the Commission discussed the evidence bearing on the propriety of the proposal and found, among other things, that there was no warrant therefor either as based on differences in distances or in transportation (R. 183); that the respondents appeared to be agreed that, given a fair relation between the respective origin groups, a single rate group basis was much to be preferred to any multiple basis; that "normally, coal sales turn on a price difference of as little as a few cents a ton"; and that plainly, therefore, only by the "maintenance of a single rate basis from each of these coal-rate districts can unjust discrimination and undue prejudice be avoided" (R. 183).

Proceeding to the question of the fairness and reasonableness of the rate relations between the respective origin groups that would be established under the revision of rates proposed, the Commission first found that the operating conditions from the respective Indiana and Illinois groups to the

northern Illinois destinations were in general substantially similar (R. 185), and, thereafter, it gave consideration to statistics of record showing the tonnages produced and moved from the respective mine groups during the years 1923 and 1936 (generally regarded as approximating normal) as compared with those during the year 1941, the latter period being the latest for which fairly complete tonnage results were of record. The statistics also made like comparisons with respect to the Illinois and Indiana mines as a whole. Generally stated, it appeared that to Beloit and the principal coal consuming destinations in northern Illinois, the shipments from the Indiana mines in 1941 showed an increase over the year 1936 considerably greater than that shown for the Illinois mines. In the matter of maintaining the total of all tonnage produced and shipped at or near the level of former years, the showing for the Indiana mines was also more favorable. But, while this was true for the Indiana mines as a whole, the total tonnage shipped from the Brazil group showed a sharp decrease. The Linton group had, in comparison with Brazil and also with the Springfield and southern Illinois groups, maintained its tonnage produced and shipped at a quite high level. The Princeton group had considerably increased its total tonnage of coal produced and shipped. (R. 185–187.)

Based in part on the statistics of production and tonnage shipped and in part on a comparison of the average distances and average rates from Brazil, on the one hand, and Linton, on the other, to Beloit and to the 12 representative northern Illinois destinations, the Commission concluded that the rate differential, Brazil under Linton, existing and proposed, was too small and should be increased to 10 cents. Thereafter, the Commission said (R. 187):

> If the proposed rates from the Indiana groups which are higher than the so-called normal basis [12] were reduced to the latter basis, and if the single-line rates of the Milwaukee and the Illinois Central from the Linton district were increased to the normal basis proposed from the other mines in that group, the rates from all of the Brazil mines made 10 cents less [than from Linton], and the Princeton-Boonville rates made 7 cents more, the resulting rates to the 12 destinations would average $1.95 from Brazil, $2.05 from Linton, and $2.12 from Princeton-Boonville. Such rates, referred to hereinafter as approved rates, compare favorably with the proposed rates from the Illinois groups to the same destinations, with the exception of certain of

[12] From certain mines in the Indiana groups to a few destinations in Northern Illinois the rates were higher than the group rates. In those few instances the proposed rates were also higher than the group rates proposed (R. 182).

> the rates from the Fulton-Peoria, Danville, and Du Quoin groups.[13]

In addition to the support afforded by the statistics of production and tonnage shipped from the respective mine groups and the reasons it gave for increasing to 10 cents the differential between the Brazil *base group* and the Linton group, the Commission, in determining upon the "approved rates" to the 12 representative northern Illinois destinations, applied, as tests of their justness and reasonableness, the distance scales of rates known as the Indiana-Illinois scale and the Midland scale,[14] already described in its report and approved for use in the proceeding (R. 172). The Commission's application of the distance scales to the approved rate from Brazil is generally illustrative of the use made of the scales. In connection therewith it said (R. 189):

> The average approved rate of $1.95 from Brazil to the 12 destinations for 256 miles is 88.6 percent of the Indiana-Illinois scale and 76.5 percent of the Midland scale,

[13] Certain of the proposed intrastate rates from mines in the Fulton-Peoria, Danville, and Du Quoin groups in Illinois were badly aligned. To correct those situations the Commission prescribed the adjustments that would result in lawful rates under section 13 (4) of the Act. In the cases of the Danville and Du Quoin groups, the adjustments found necessary resulted in the prescription of the group rates to apply therefrom. (R. 188, 189.)

[14] The distance scales are set out in Appendix C to the report. (R. 219.)

which compares favorably with the foregoing average approved rate from the Danville group, with the average proposed rate of $1.83 to the same destinations from Springfield for 225 miles, 91.5 and 75.6 percent of the respective scales, and with the average proposed base rate of $1.59 from Fulton-Peoria for 159 miles, 93.5 and 84.6 percent of the scales. The average rate of $2.12 approved from the Princeton-Boonville group for 366 miles is 83.5 and 67.9 percent of the respective scales, as compared with an average proposed rate of $2.14 for 354 miles from southern Illinois, 84.3 and 68.6 percent of the scales.

Applying the test of the distance scales to the approved rates from the Indiana-Illinois mines as a whole, the Commission said (R. 191):

> Taken as a whole, the combined rates herein approved from Indiana to the 12 northern Illinois destinations average 86.1 percent of the Indiana-Illinois scale and 70.7 percent of the Midland scale and the combined rates herein approved from the Illinois groups to those destinations average 85.4 and 70.3 percent of those scales. We believe that the rates or rate bases above indicated, which are set forth more specifically in appendices A and D hereto, will afford fair and reasonable relations of rates to northern Illinois destinations, both as between the respective

origin groups and as between the Indiana groups on the one hand, and the Illinois groups on the other.

In connection with its determination and approval of rates from the Indiana groups to Beloit, Wis., the Commission made the same application and use of the distance scales as tests of the justness and reasonableness of the rates approved (R. 193). While the approved rates to Beloit were on a somewhat higher level than those approved to northern Illinois destinations, they conformed to (R. 192) the 15-cent maximum spread, Beloit over Rockford, above referred to, and, moreover, Beloit was somewhat more distant and was a marginal point, that is, "located at the edge of a territory which, because of less favorable transportation conditions, properly takes somewhat higher rates than does northern Illinois" (R. 97).

In passing upon the proposed rates from the Western Kentucky group to the 12 representative destinations in northern Illinois, the Commission found that, to 6 of the destinations the rates proposed were unjustified. The 6 destinations were points intermediate to Chicago and the rates thereto were to be increased to the Chicago basis of $2.40. Such basis would have made the western Kentucky rates to the 6 destinations 35 cents over the southern Illinois rates to the same points, whereas the Commission concluded that

the differential should not exceed 25 cents. The proposed rates to the other Illinois destinations were found justified (R. 195–196).

As above stated, the Commission's order in No. 28881, *Bituminous Coal Rates Within Illinois,* although not under attack, is closely related to the order in I. & S. No. 5139. Broadly described, the relief sought by the railroads in that proceeding and granted by the Commission was an authorization of increases in the Illinois intrastate rates involved in the adjustment to a level more nearly commensurate with the maximum interstate level approved by the Commission as reasonable for midwestern territory (R. 198). The intrastate rates were assailed as discriminatorily low and unlawful, not as related to the interstate rates from Indiana (which were also relatively low), but as related to the interstate rates in effect from the Illinois origins to destinations in eastern Iowa and southern Wisconsin (R. 203). The Commission found substantially that the Illinois intrastate rates caused undue and unjust discrimination against interstate commerce and that the unlawfulness should be removed by increasing the rates to the approved bases indicated in the report, including appendixes A and D (R. 211).

Near the end of its report the Commission summarized its findings of fact (R. 205) and thereafter set forth its conclusions (R. 210), the first

3 of which, it is believed, contain all that is essential for present purposes. These were that

1. The present and the proposed rates from Indiana to the northern Illinois destinations, as published in the tariffs enumerated in appendix E to this report, result or would result in unjust discrimination as between shippers and receivers of coal transported in whole or in part by the Milwaukee or the Illinois Central railroads; in violation of section 2 of the act and in undue preference and prejudice as between the origins in the Brazil and Linton districts, and as between the respective Indiana districts, in violation of section 3 (1) of the act, in and to the extent that such rates reflect or would reflect rate relations between such districts and between the points in each of those districts to the respective destinations which differ from the relations reflected by the rates and the rate bases set forth as approved in this report, including appendices A and D hereto.

2. The proposed rates from the Brazil, Linton, and Princeton districts in Indiana to Beloit, as published in tariffs named in appendix E, would result in unjust discrimination as between shippers and receivers of coal transported in whole or in part by the Milwaukee, in violation of section 2 of the act, and in undue preference and prejudice as between (a) the origins in the respective Brazil and Linton districts, (b) the respective Indiana districts,

and (c) the Indiana districts on the one hand, and the Illinois districts on the other, in violations of section 3 (1) of the act, in and to the extent that such rates would reflect rate relations between such districts and the respective points in each of such districts to Beloit, which differ from the relations reflected by the rates set forth as approved in appendices A and D to this report.

3. The proposed rates from the Indiana districts to the northern Illinois destinations and to Beloit would be unreasonable to the extent that they would exceed the rates or rate bases set forth in the column headed "Rate approved in this proceeding" in appendix A to this report.

Following the issuance and entry by the Commission of its report and orders of July 9, 1945, petitions for reopening, rehearing, and reconsideration were filed by the Milwaukee, the Coal Trade Association of Indiana, and certain other parties (R. 126). These petitions were denied by the Commission, November 13, 1945.

PROCEEDINGS IN THE LOWER COURT

The complaint of the Ayrshire Collieries Corporation et al. was filed December 21, 1945 (R. 1), and that of the Milwaukee December 27, 1945 (R. 41). Answers were filed by the United States, by the Commission as intervener, by various intervening railroads and by intervening Illinois

coal traffic bureaus and interests (R. 55). By order of the court the complaints were consolidated for all purposes (R. 54) and, on April 22, 1946, the consolidated causes were heard before the specially constituted court of three judges, consisting of Circuit Judges Evans and Major, and District Judge Igoe (R. 52). On June 5, 1946, the Court filed and entered its findings of fact, conclusions of law, and judgment, sustaining the Commission's order as in all respects lawful and valid and dismissing the complaints (R. 108, 111). Due to the illness of Judge Evans, which occurred after the hearing, the court's decision was rendered, and the findings, conclusions, and judgment signed by Judges Mayor and Igoe (R. 108).

SUMMARY OF ARGUMENT

I

The determination of the causes by a majority of the three-judge court did not offend against the requirements of the Urgent Deficiencies Act, 38 Stat. 208, 220, 28 U. S. C. 47, 47a. While there is the provision that the application for the injunction shall be heard and determined by three judges, one of whom shall be a circuit judge, the statute expressly provides for a majority determination. Here the illness of Judge Evans supervening between the hearing of the causes and the decision by the other two judges did not defeat the requirement of a circuit judge's participation

in the decision since Circuit Judge Major and District Judge Igoe concurred in the final decision. To import into the general language of the statute a prohibition in all circumstances against a determination by two judges acting alone would militate against the statute's purpose of expediting in the public interest the final determination of the causes for which it provides special court review. In this case expedition would be defeated if it should have to be re-submitted on final hearing to a three-judge court.

From the practical standpoint the need for a narrow, restrictive construction is not apparent. In hearings on applications for restraining orders or interlocutory injunctions the required statutory notice is short and the applications are promptly disposed of, whereas the determining of causes on final hearing where the record is large ordinarily requires a considerable period of time.

II

In a proceeding under section 15 (7) of the Act the Commission is empowered to "make such order with reference thereto [proposed new rate] as would be proper in a proceeding initiated after it had become effective." Section 15 (1) provides that where the Commission, after hearing, shall be of opinion that any rate is in violation of any of the provisions of the Act, it is

738041—47——5

authorized to prescribe what will be the lawful rate, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist. *Akron, C. & Y. Ry. Co.* v. *United States,* 22 F. (2d) 199, 203 (W. D. N. Y.)

The construction given section 15 (7) from the beginning established as entirely within the Commission's authority its findings in the instant case that the present as well as the proposed rates were unlawful and its order prescribing the rates to cure the unlawfulness. *Advances in Rates-Western Case,* 20 I. C. C. 307, 314; *Lignite Coal from North Dakota,* 126 I. C. C. 243, 244; *Sioux City Terminal Ry. Switching,* 241 I. C. C. 53, 73–74.

The appellants, in contrast to their contention here recognized throughout the Commission proceedings that the present rates were in issue. This is shown in the petition for suspension of the proposed rates filed by appellant Coal Trade Association of Indiana (R. 132) in the testimony of its witness Scott (R. 1060) and in its exceptions to the Examiner's proposed report (pp. 17, 111, 112).

Appellant, Ayrshire Collieries, in its contention that, since the Milwaukee had not proposed any change in its single-line rates from Brazil and Linton to Beloit, those rates were not in issue

and that the Commission had exceeded its authority in requiring that they be increased, is clearly wrong.

The Commission's order of investigation included the investigation of the lawfulness of all rates contained in the named tariffs which contained the very rates which appellants assert the Commission was without authority to deal with. Not only did the Milwaukee propose the republication of an existing single-line rate but by proposing higher joint-line rates to Beloit was proposing a new practice affecting rates to Beloit.

III

While appellants contend generally that the Commission's findings are unsupported by underlying findings and evidence, the principal basis for this contention by Ayrshire Collieries is that, in order to constitute a section 2 violation, it must appear that a different rate is exacted from one shipper than from another over the same line or route. And as to the section 3 violation the claim is made that the evidence must show specific injury.

The Commission's report finds that transportation conditions via single-line or joint-line routes do not differ materially and that under the circumstances an extensive showing of injury through loss of tonnage to particular shippers or

consumers by reason of discriminatory rates is not required. *United States* v. *Trucking Co.*, 310 U. S. 344.

As to the contention that there must be an identity of origins and routes before section 2 comes into play; the practice of grouping points of origin or destination, or both, has long been in existence and is embodied in many rate structures. Such contention would read that section out of the Act as to many situations to which it is obviously intended to apply. For a carrier to insist for the purposes of single-line rates that mines within one rate group are of distinct origins while treating all mines within the same group from which joint-line rates apply as being of the same origin is unreasonable and inconsistent.

The Commission did not exceed its authority in approving and prescribing the adjustment of rates to be established.

The contention that the Commission's order was beyond its authority because not affording the carriers alternative methods of removing the discrimination and because the Milwaukee, although having exclusive control of its single-line rates, did not, with like effectiveness, control the higher joint-line rates is unsound.

The Commission's order is not merely an order to desist from unjust discrimination. It is demonstrably an order under section 15 (1) determining and prescribing the just and reasonable fu-

ture rates. The present rates from the Illinois origin groups remain constant under the proposed tariffs. It follows that in order to maintain the required relationships between the rates from Indiana to Beloit and the rates from Illinois to Beloit, the prescribed rates from Indiana groups to Beloit must be put into effect. The latter, therefore, become rates prescribed under section 15. The same result obtains in the rates from Indiana to northern Illinois destinations under the order of the Commission in *Fairbanks-Morse Case, supra.*

Under this aspect *Texas & Pacific Ry. Co.* v. *United States,* 289 U. S. 627, has no application here. There the order was not made under section 15 (1) but under section 3 where an alternative method of removing the discrimination must be left to the carrier. But the opinion stated that this is not true of an order pursuant to section 15 (1). The distinction between a section 3 order and a section 15 (1) order was also recognized in *Youngstown Sheet & Tube Co.* v. *United States,* 295 U. S. 476.

It was not necessary to give validity to the Commission's action in this case that it find that the preferential rates were noncompensatory. Rates may lie within the zone of reasonableness and still result in undue prejudice and discrimination. *Interstate Commerce Commission* v. *Inland Waterways Corp.,* 319 U. S. 671; Cf. *Scandrett* v. *United States,* 32 F. Supp. 995 (D. Oreg.), affirmed, 312 U. S. 661.

In any event in the present case, considering together the interstate and intrastate adjustments the existing interstate as well as the intrastate rates were burdensomely low.

ARGUMENT

I

THE DECISION OF THE DISTRICT COURT IS NOT RENDERED INVALID BECAUSE OF THE FACT THAT ONE OF THE THREE JUDGES WHO HEARD THE CAUSE WAS UNABLE, BECAUSE OF ILLNESS, TO PARTICIPATE IN THE FINAL DETERMINATION

Appellants' first contention is that the District Court's judgment is invalid because it was made by two of the three judges who heard the case, Judge Evans having become ill after the hearing (R. 108). Appellants contend that the case cannot be decided by a majority of the three judges who heard it, if for any reason the third judge is unable to participate in the final decision. The applicable provisions of the statute, 38 Stat. 220, are as follows:

> * * * No interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the applica-

> tion for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless a majority of said three judges shall concur in granting such application. * * * *Provided,* That in cases where irreparable damage would otherwise ensue to the petitioner, a majority of said three judges concurring, may, on hearing, after not less than three days' notice to the Interstate Commerce Commission and the Attorney General, allow a temporary stay or suspension, in whole or in part, of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of said judges pending the application for the order or injunction, * * *.

In addition to the support given appellants' contention by the literal language of the statute, there is the undoubted policy of the statute that applications for injunctions restraining enforcement of orders of the Interstate Commerce Commission should receive the deliberation not of a single judge but of three judges. It requires no elaborate argument to show that a decision in which only two judges participate is not necessarily that which would have been reached had a third judge participated in the deliberations preceding the decision. Consequently, therefore, appellants' contentions in this regard cannot be dismissed as insubstantial.

On the other hand, there are in our judgment more cogent considerations pointing to an opposite construction. A basic purpose of the Urgent Deficiencies Act is to achieve expeditious disposition of applications to enjoin enforcement of Commission orders. If appellants' construction were accepted, the illness or disability of any one of the three participating judges prior to final decision would necessitate a completely new hearing. Cases arising under the Act are often complicated and difficult, requiring lengthy and extensive consideration. The present case is not unique in this regard. In our view, acceptance of appellants' construction would result in considerable waste of time and energy, and would thus defeat the purpose of the statute to dispose quickly of cases arising under it.

Moreover, the provision of the statute requiring that a three-judge district court be specially constituted to deal with cases of this sort was unquestionably patterned upon the composition of the circuit courts of appeals; and it is expressly provided by law that two judges constitute a quorum of a circuit court of appeals (28 U. S. C. 212). It would seem highly unlikely that Congress intended to impose a more rigid procedural limitation upon the three-judge district courts than upon the circuit courts of appeals. In addition, the Urgent Deficiencies Act expressly pro-

vides that a decision may be reached by a three-judge court if a "majority of said three judges" concur. The case having been duly heard by three judges, the decision concurred in by two of them would seem to be as conclusive when the third judge fails to because of illness as it would be if his failure to concur were the result of his dissenting views.[15]

Furthermore, a feature of the present case that must not be overlooked is that the decision of Judges Major and Igoe, alleged to be invalid, was one denying, after final hearing, a permanent injunction.[16] In *Stratton* v. *St. Louis S. W. Ry.*,

[15] In *State of Ohio et al.* v. *United States*, 6 F. Supp. 386 (S. D. Ohio) (affirmed, 292 U. S. 498), one of the judges died before the decision was rendered, but an opinion written by him was found among his papers and was published as the opinion of the court, concurred in by the two other judges. The opinion had been written pursuant to an arrangement had at a prior conference of the three judges (p. 390). A stay pending appeal was applied for and a new judge was assigned to constitute a court to hear and decide the application. In *Oregon-Washington R. & Nav. Co.* v. *United States*, 47 F. (2d) 250 (D. Oreg.) (affirmed, 288 U. S. 14), the statutory court was twice reconstituted before a decision was rendered and decree entered. Following the first hearing one of the judges died and another judge was assigned and a second hearing held. Following the second hearing another judge died and the court as constituted for the third and final hearing included only one member of the original court.

[16] The bills asked for interlocutory injunctions but the applications were not pressed. In response to requests, the Commission postponed the effective date of its order until July 23, 1946.

282 U. S. 10, this Court reviewed the provisions of section 266 of the Judicial Code and certain of its decisions interpreting and applying the section. It appears that, under the section as worded prior to 1925, a single judge heard a cause on final hearing and thus might have to reconsider and decide questions already passed upon by three judges on the application for an interlocutory injunction. To end this anomalous situation, an amendment was enacted in 1925 adding to the section the provision that "The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court." This provision, however, left uncertain whether the phrase "such suit" was intended to refer only to a suit in which an interlocutory injunction was in fact sought or to a suit in which it might have been, but was not, applied for. Under the interpretations given the provision it is only in cases where interlocutory injunctions are sought and pressed that a three-judge court is required; in cases where such relief is not sought and pressed a single judge may hear and determine the case.

It is evident from the above that, so far as section 266 is concerned, the basic purpose of the three-judge court provisions is met by their operation in connection with interlocutory or other like injunctive orders. *Stratton* v. *St. Louis S. W.*

Ry., supra, p. 17. Under the Urgent Deficiencies Act, the causes, of course, require three-judge courts on final hearing as well as hearings on applications for interlocutory injunctions or restraining orders. However, under the latter Act, just as under Judicial Code section 266, the whole emphasis of the provisions safeguarding against the possibility of improvident action by a single judge is directed to the prevention of improvident issuance of interlocutory injunctions or restraining orders. So far as the decision on final hearing is concerned the Act provides simply: "and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said Commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply." [17]

[17] These words mean simply that the court shall consist of three judges, one of whom must be a circuit judge. Congress, when extending section 266 of the Judicial Code to apply on final hearing did so, as above shown, by the provision that "The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court." It is not wholly plain that even this provision precludes a decision by two judges acting alone. Moreover, the construction placed on the provision, that it applies only where an interlocutory injunction has been in fact sought and pressed, convincingly demonstrates that, in connection with a decision on final hearing, any need for a strict application of the three-judge requirement is absent.

II

THE COMMISSION'S ORDER WAS WITHIN ITS STATUTORY AUTHORITY

(1) THE COMMISSION'S AUTHORITY EXTENDED TO THE EXISTING RATES AND RELATIONSHIPS

As pointed out in the preliminary statement (pp. 14, *supra*), under the tariff schedules before the Commission in I. & S. No. 5139 the rate increases proposed from the Indiana groups to the northern Illinois destinations ranged in amounts from 5 to 15 cents. At the time, the Milwaukee and the Illinois Central were maintaining from the mines on their lines in the Linton group to Rockford and other of the northern Illinois destinations served by them single-line rates lower by 12 cents than the group rates applying from the other mines in the Linton group to the same destinations. From the mines on its line in the Brazil group, the Milwaukee was maintaining to Rockford and the other northern Illinois destinations served by it, single-line rates lower by 17 cents than the group rates applying from other mines in the Brazil group to the same destinations. Since the rate increases to the northern Illinois destinations proposed by the tariff schedules were generally the same in amounts from all of the mines in the two groups, including those on the lines of the Milwaukee and Illinois Central, the dual basis of rates, as then in effect, was, by such schedules, proposed to be con-

tinued. The Commission's conclusions and underlying findings condemned as unlawful such dual basis of rates both as maintained in the existing rate adjustment and as proposed to be continued (R. 183, 210–211). In determining the rates and relations that should be established from Indiana to the northern Illinois destinations, the Commission found that the single-line rates of the Milwaukee and the Illinois Central should be increased to the group, or "normal," basis proposed and, further, that the differential, Linton over Brazil, which in some instances was 5 cents and in others 10, should be stabilized at 10 cents, "the standard differential, in effect generally to the Northwest." (R. 187.) The differential, Princeton over Linton, as existing and as proposed, was 7 cents. The Commission, however, considered that the Boonville group should be merged with the Princeton group and accorded the same differential of 7 cents (R. 187). The only mine in the Boonville group continuing to produce coal in any substantial quantity was that of the Sunlight Coal located about 10 miles across country from a mine in the Princeton group producing coal from the same seam (R. 186, 208).

In its formal conclusions with respect to the rates from Indiana to the northern Illinois destinations, the Commission found that the *present* and the proposed rates result, or would result, in violations of sections 2 and 3 (1) of the Act.

(R. 210–211.) Similarly, the Commission's formal findings of fact are directed to the present, as well as the proposed, rates. (R. 208, 210.) By its order the Commission required the railroads to desist from the violations found and, in effect, to establish rates and rate relations on the bases approved in the report (R. 222).

In their bills and briefs, appellants contend that the Commission's report and order are invalid because assuming to determine the lawfulness of the *present* rates from Indiana to Illinois destinations and to require the railroads to establish rates designed to cure the unlawfulness of the *present* rates, an issue which, the appellants urge, was not before the Commission in the proceeding. That the appellants are clearly wrong is apparent.

Under the I. & S. provisions (sec. 15 (7)) of the Act, it is provided that whenever there shall be filed any schedule stating a new rate, or any new classification, or regulation or practice affecting any rate, the Commission shall have authority, either upon complaint or its own initiative, to enter upon a hearing concerning the lawfulness thereof; that, pending such hearing and the decision thereon, it may, upon filing and delivering to the carriers affected a written statement of its reasons for such suspension, from time to time suspend the operation of such schedule, but not for a period longer than seven months; and that "after full hearing, whether completed before or

after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission *may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective.*" [Italics supplied.]

The paragraph of the Act specifying the kind of order the Commission can enter in a proceeding initiated after schedules become effective, is section 15 (1), which provides in part:

> That whenever, after full hearing, * * * the Commission shall be of opinion that any individual or joint rate, fare, or charge * * * or that any individual or joint classification, regulation, or practice * * * is or will be unjust or unreasonable *or unjustly discriminatory or unduly preferential or prejudicial,* or otherwise in violation of any of the provisions of this part, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist * * *.

In *Akron, C. & Y. Ry. Co.* v. *United States*, 22 F. (2d) 199 (W. D. N. Y.), it was said (p. 203):

> Section 15, par. 7, empowered the Commission to entertain proceeding No. 2440. After a full hearing, *the Commission may make such order with reference to the proposed new rate as would be proper in a proceeding initiated after it had become effective.* It was within the power of the Commission, if it found the rate attacked to be unreasonable, under section 15, par. 1, to require a reduction of that rate to a basis found to be reasonable. *Advances in Rates, Western Case*, 20 Interst. Com. Com'n R. 307. *It has power either to increase or decrease the then existing rates. Western Paper Makers' Chemical Co.* v. *U. S.*, 271 U. S. 268, 46 S. Ct. 500, 70 L. Ed. 941; *Mo. Pac. R. Co.* v. *Boone*, 270 U. S. 469, 46 S. Ct. 341, 70 L. Ed. 688; *Excelsior from St. Paul*, 36 Interst. Com. Com'n R. 349; *Naval Stores from Southern Points*, 87 Interst. Com. Com'n R. 740. [Italics supplied.]

In *Advances in Rates—Western Case*, 20 I. C. C. 307, 314, the Commission said:

> * * * The question before the Commission is that which would have arisen had these rates gone into effect and a formal complaint been made against them as unjust and unreasonable. We may establish the rates proposed as reasonable, one or all of them, or reduce the proposed rates. We may continue in effect the present lower

> rates, or we may reduce the existing rates. For "the Commission may make such order in reference to such rate * * * as would be proper in a proceeding initiated after the rate had become effective."

In *Lignite Coal from North Dakota,* 126 I. C. C. 243, 244, the Commission said:

> Respecting the jurisdictional question, the position is taken that, in an investigation and suspension proceeding, the only issue before us is as to the lawfulness of the suspended schedules; that we are called upon either to condemn or approve the schedules; that we have no authority to approve a basis intermediate between the existing rates and the basis sought to be made effective; and that as the proposed schedules were not approved, the finding that the present rates were too low was consequently "irrelevant," "gratuitous," and "not binding on anyone." But this view is wholly untenable and in conflict with specific provisions of the act and numerous decisions of the commission. See *Advances in Rates—Western Case,* 20 I. C. C. 307, at page 314; *Excelsior from St. Paul, Minn.,* 36 I. C. C. 349, at page 365; *Salt from Louisiana Mines to Chicago,* 69 I. C. C. 312, at page 313.

In *Sioux City Term. Ry. Switching,* 241 I. C. C. 53, 73–74, the Commission said:

> On brief, complainants question our authority to deal with this situation in these

proceedings. In an investigation and suspension proceeding we constantly take cognizance of violations of sections 1, 2, and 3 of the act, and there being placed before us the question of what rates, rules, regulations, or practices are lawful for the future, we may require changes in the existing rates, rules, regulations, and practices (*Lignite Coal from North Dakota,* 89 I. C. C. 726); and we have authority to make such order with reference to the matters under investigation as would be proper in a proceeding initiated after the proposed schedules go into effect (section 15 (7)).

* * * It is apparent that the unjust discrimination and undue prejudice can lawfully be corrected only by requiring respondent to decline further to extend free of charge facilities and services which under existing law it has no duty to furnish. An appropriate order to that end will be entered.

In short, the statute (Section 15 (7)) and the construction given it from the beginning (*Advances in Rates-Western Case, supra*) establish as entirely within its authority the Commission's findings in the instant case that the *present* as well as the proposed rates were unlawful and its order to desist from maintaining such rates. The appellants, in contrast to their contentions here, recognized throughout the Commission proceeding that the *present* rates were in issue and that a full hearing was accorded on that issue. For

example, in its protest or petition to the Commission asking for suspension of the proposed rate adjustment, appellant Coal Trade Association of Indiana advanced as its first ground, "1. Because the *present* rates are in excess of reasonable maximum rates, and the proposed rates would be unreasonable in violation of Section 1 of the Interstate Commerce Act" (R. 132). During the hearings the said appellant's witness Scott was asked as to "the position of the Indiana operators with respect to the proceeding in issue." In reply he testified in part R. 1060–1061:

> A. We filed a petition with the Commission seeking suspension of the rates from the Indiana mines to destinations in Northern Illinois and Beloit, Wisconsin. * * * Our position with respect to the rates to destinations in Northern Illinois is that *the present rates* on bituminous coal from Indiana mines are not less than reasonable maximum rates, but are *unreasonable and excessive* * * *. Furthermore, the *present* and proposed rates to these Northern Illinois destinations *subject the producers and shippers of coal from Indiana mines to an undue prejudice and accord the producers and shippers of coal from Illinois mines,* who ship in interstate and intrastate commerce within the State of Illinois, *an undue preference in violation of Sections 3 and 13 of the Act, and subject some producers and shippers of Indiana*

coal to an undue prejudice and accord other producers and shippers of Indiana coal an undue preference, in violation of section 3 of the Act.

* * * It is our position that under sections 3 and 13 of the Act, the Commission should *prescribe rates that will result in the restoration* of the standard differentials between the Illinois mines on the one hand and the Indiana mines on the other, and as between the Indiana mines themselves which standard differentials existed prior to 1930 to these Northern Illinois destinations, and which has existed and which exists today to the territories north, northwest, and west of the Northern Illinois destination territory.

Q. By whom were the exhibits which you will introduce in this proceeding compiled?

A. They were compiled by me, and under my direct supervision. [Italics supplied.]

Furthermore, in exceptions[18] to the Examiner's proposed report, appellant Coal Trade Association of Indiana said:

In these proceedings, under the issues involved in the Investigation and Suspension case and the 13th Section case, the present record is sufficient for the Com-

[18] Reference is made to these exceptions pursuant to agreement in the Stipulation As To The Record (R. 1700). The exceptions are not included in the printed transcript but appear as one of the documents included in plaintiffs' exhibit 3 filed at the hearing in the District Court and included in the record transmitted to this Court.

> mission to determine the propriety of the level of the rates from the mines in Illinois and Indiana to these destinations in northern Illinois and Beloit, and the differentials to apply as between the mine origin groups in said States in the movement of coal to such destinations [p. 17].

It was also urged in the exceptions that:

> The record shows the transportation conditions within Illinois and from Indiana to these destinations to be the same. There is no evidence omitted from this record which is necessary for a decision of these issues. Why postpone again to a future proceeding, whether by way of arbitration or by way of some hitherto unknown type of proceeding before this Commission, the question of the final disposition of the issue of the proper relationship and measure of the rates from these two competing sets of origin groups in Illinois and Indiana to this important destination territory? * * * We urge that the Commission exercise the jurisdiction conferred on it by the Act, and enter an order based on the facts, * * * and that there be no further postponement in making effective within this territory a rate adjustment that is fair and reasonable to all concerned, a rate adjustment that protects the interests of the consumer as well as the producers of coal in this territory [pp. 111–112].

It would appear from the above that the Coal

Trade Association of Indiana, the principal protestant, raised the issue of the lawfulness of the *present* rates and rate relations; that during the proceedings it made unmistakably plain that it had done so; that it in effect insisted that it was the Commission's duty to proceed and prescribe the fair and reasonable rates and rate relations; and that the evidence was ample for the purpose. As stated in *New York Cent. & H. R. R. Co.* v. *Int. Com. Comm.*, 168 Fed. 131, 139 (S. D. N. Y.), the Commission is an administrative tribunal dealing with practical problems. "Before we declare an order of the commission invalid as being outside the issues, we think that we should be satisfied that it is outside the issues actually presented to the commission and upon which the parties were heard."

(2) THE COMMISSION, IN DEALING WITH THE RATES TO BELOIT, ACTED WELL WITHIN ITS AUTHORITY

While, as to the northern Illinois destinations, the dual basis of rates from the Brazil and Linton groups which it was proposed to continue, already existed, this was not true of the rates to Beloit, these being the same in amounts from all mines in the respective groups including the mines on the line of the Milwaukee. Under the proposed schedules, however, a dual basis of rates to Beloit was to be established for, while the group rates as applying from all mines other than those on the Milwaukee were to be increased, no increase in the single-line rates of the Milwaukee

from the mines directly served by it was proposed. And similarly as to the proposed rates from the Princeton group, while the group rates as applying from all other mines was to be increased, no increase in the rates from the mines in that group on the Southern and Algers, Winslow and Western was proposed. The Southern was the only carrier serving the Boonville group and it proposed no increase in the rates to Beloit from that group (R. 178).

In its bill (R. 14–15) appellant Ayrshire Collieries contends substantially that, since the Milwaukee had not proposed any change in its single-line rates from Brazil and Linton to Beloit, those rates were not in issue and the Commission, therefore, had exceeded its authority in requiring that they be increased.[19] This contention is clearly wrong in all respects.

[19] Appellant makes the same contention as to the rates to Beloit from the mines in the Princeton and Boonville groups on the lines of the Southern and the Algers, Winslow and Western. Here the situation is different; for the Southern's tariff included in the Commission's order of investigation does not contain any rates from Princeton or Boonville to Beloit, and because of that the Commission made no findings or order as to such rates. The Commission's Conclusion No. 2 (R. 210–211), which deals with the rates to Beloit, relates only to the proposed rates from the Brazil, Linton and Princeton districts "as published in the tariffs enumerated in Appendix E" and, since such tariffs do not contain rates of the Southern Railway to Beloit, it is evident that the Commission made no findings or order with respects to such rates. This is further shown by the fact that Boonville is omitted from the Indiana districts named in Conclusion No. 2.

The Commission's order of investigation (R. 141–144) in I. & S. No. 5139 provides in part as follows:

> *It appearing,* That there have been filed with the Interstate Commerce Commission tariffs containing schedules * * * designated as follows:
>
> * * * * *
>
> Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings, George J. Haight, Trustees.):
>
> Supplement No. 9 to I. C. C. No. B–7238;
>
> Supplements Nos. 27 and 28 to I. C. C. No. B–7246;
>
> Supplement No. 25 to I. C. C. No. B–7287;
>
> * * * * *
>
> *It is ordered,* That the Commission * * * enter upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in the said schedules contained in said tariffs, viz:
>
> * * * * *
>
> And the rates, charges, regulations and practices stated in all schedules contained in each of the other said tariffs and supplements named in this order.

In short, the Commission's order of investigation provided for investigation of the lawfulness of all rates contained in the tariffs named in the order. Among the Milwaukee tariffs specifically

named is Supplement No. 27 to I. C. C. No. B-7246. Item 371 thereof states that the rate from Brazil-Clinton to Beloit via the single-line route of the Milwaukee shall be $2.10 and that the rate from Linton-Sullivan to Beloit via the single-line route of the Milwaukee shall be $2.30. Thus it is evident that the Milwaukee tariff under investigation contained the very rates which the appellants assert the Commission was without authority to deal with. Moreover, the Milwaukee, in proposing such single-line rates together with the higher joint-line rates to Beloit to which it was a party, was proposing a new practice affecting the rates to Beloit.

The Commission's authority under section 15 (7) taken together with its authority under section 15 (1) is well brought out in *Coal Rates from Oak Hills, Colo.*, 30 I. C. C. 505, in which the Commission said at p. 508:

> Under section 15, paragraph 1, of the act, the Commission, on its own initiative, whenever it is of the opinion that any rates demanded, charged, or collected are in any way unlawful, may enter upon an investigation, hold full hearings, and determine and prescribe just and reasonable rates. Where new rates are filed, the Commission, under section 15, paragraph 2 [now paragraph 7], is authorized by similar means to determine the propriety of such new rates and, pending such determination, to

suspend the operation of the schedules stating such new rates. In connection with the latter hearing the statute casts upon the carrier the burden of justifying any increased rates.

As has already been observed, the proposed rates include some increases over and some decreases under the present rates, *while in other cases the proposed rates are the same as the present.* The order herein shows plainly the intent of the Commission to enter upon a hearing concerning the propriety of the increases and the lawfulness of the rates under suspension, and provides that the operation of *all* schedules contained in the proposed tariff be suspended. Clearly, when the proposed rates involve increases or decreases they are new rates, and as to them the Commission's jurisdiction in this proceeding is full and complete by virtue of the second [now seventh] paragraph of section 15. *If the rates in which no change is proposed be not new rates, then they are necessarily rates "demanded, charged, or collected," and their investigation in this proceeding is proper under the first paragraph of section 15.* And certainly there can be no doubt under the second [seventh] paragraph of the Commission's power to suspend in its entirety the schedule stating these rates. [Italics supplied.]

That, entirely aside from the fact that the Commission's order of investigation specifically

covered the Milwaukee's existing single-line rates to Beloit, the appellants were fully apprized that the lawfulness thereof was under investigation has already been demonstrated by the excerpts from the testimony of their witness Scott and from the exceptions to the Examiner's report filed in the case. See *supra*, pp. 47–50.

III

THE COMMISSION'S ORDER IS SUPPORTED BY FULL FINDINGS, RATIONAL CONCLUSIONS AND AMPLE EVIDENCE

As pointed out both by the brief of the Ayrshire Collieries and that of the Milwaukee, the Commission, in condemning as unlawful the dual basis of rates, both as proposed to be continued from the Brazil and Linton groups to destinations in northern Illinois and as proposed to be extended to the adjustment of rates from those groups to Beloit, Wis., found such dual basis of rates unjustly discriminatory in violation of section 2 and unduly preferential and prejudicial in violation of section 3. While both briefs contend generally that this finding is unsupported by underlying findings and evidence, the brief of the Ayrshire Collieries (Chap. II) makes such contention separately as to the finding of unjust discrimination in violation of section 2. However, the brief later makes plain (p. 39) that the principal contention in chapter II is that, in order to constitute unjust discrimination violative of section 2, it must ap-

pear that a different rate is exacted from one shipper than another from the same origin over the same line or route. Appellant Ayrshire Collieries considers, apparently, that the fact that the Milwaukee is, for example, maintaining a low single-line rate from mines directly served by it while at the same time joining in a much higher joint-line rate from other mines in the same group to the same destinations does not meet the precise test of unjust discrimination under section 2. It makes certain other contentions, but the contention just mentioned is the principal distinction it emphasizes between the Commission's findings under section 2 and the findings made under section 3.

In chapter III of its brief, appellant Ayrshire Collieries deals with the Commission's findings condemning the dual basis of rates, existing and proposed, as unduly preferential and prejudicial in violation of section 3. There, too, the appellant contends that the Commission's findings are unsupported by underlying findings and evidence, but the chapter soon makes plain (p. 49) that what is referred to is absence of specific evidence of injury, such as evidence that "that any mine in the Brazil or Linton groups ever lost any business to a mine served by the Milwaukee" or was ever "prevented from securing an order for coal at any of these Illinois destinations by reason of the rates in effect from mines served by the Milwaukee."

From mines in the Linton group on their lines to destinations in northern Illinois served by them, the Milwaukee and Illinois Central were maintaining single-line rates much lower than the group rate in effect to the same destinations from other mines in the group. From mines in the Brazil group on its line to destinations in northern Illinois, the Milwaukee was maintaining single-line rates much lower than the group rate in effect to the same destinations from other mines in that group. By the schedules before the Commission it was proposed, not only to continue such dual basis of rates to the northern Illinois destinations, but also to inaugurate it into the adjustment of rates to Beloit. These facts found by the Commission are not questioned by the briefs of appellants; nor do they question, but instead set forth (Ayrshire Br., p. 34) the Commission's finding that a difference of a few cents per ton is normally sufficient to divert a coal contract from one mine to another [20] (R. 183, 206). However, appellants' briefs are not altogether clear as to the participation by the Milwaukee and Illinois Central in the group, or joint-line, rates from mines other than those on their lines. For example, the brief of the Ayrshire Collieries, after mentioning that the Milwaukee and Illinois Central participate in some of the tariff routes

[20] This is discussed in the *Fairbanks-Morse case*, 251 I. C. C. 181, 203.

from origins on other carriers over which the higher rates apply, says (p. 47):

> * * * The only other evidence was of the distances via shortest tariff routes from the origins, and the fact that, while the Pennsylvania Railroad published rates via short tariff routes in which the Milwaukee participated, no coal ever moved via such routes, and that any coal from origins on the Pennsylvania consigned to northern Illinois destinations was hauled to Chicago and there turned over to connections for the transportation to destination, which routes are 60 to 80 miles longer than the short tariff routes (R. 791–792).

By the above, the brief is referring to the testimony of a Milwaukee witness in answer to the question as to whether the Milwaukee received coal from other railroads that originated the coal in the Brazil and Linton groups. It is true that the witness said that he did not believe that the Milwaukee got any coal from the Pennsylvania, but his answer to the first question was (R. 791):

> A. Yes, we get some coal, but it is a small portion of the coal we handle.

Referring to the participation by the Milwaukee and Illinois Central in the joint-line rates from the Indiana groups, the Commission says in its report (R. 181–182):

> As stated, both the Milwaukee and the Illinois Central join in the so-called normal rates, by which is meant the rates main-

> tained or proposed by most of respondents, from mines in the Brazil or Linton districts to the same destinations to which they maintain their lower single-line rates. They also participate in the rates, all of which are joint-line, from the Princeton and Boonville groups to the same destinations.[21]

In the matter of comparative average distances over the single-line and joint-line routes, the Commission's report gives illustrations of such distances from the Brazil and Linton groups to the northern Illinois destinations, and to Beloit (R. 180–181). As to the distances from the Linton group, the report says, for example:

> From all the Linton mines the average distance to the 12 destinations is 293 miles. The present rates average $1.94 and those proposed $2.03. From the Linton points on the Milwaukee to the 5 representative destinations to which that respondent's

[21] Six railroads in all serve the Brazil and Linton groups (R. 180) but, of these, only the Milwaukee and the Illinois Central reach the northern Illinois destinations with their own lines. The Milwaukee and Illinois Central serve Freeport and Rockford and certain other of the northern Illinois destinations and, in addition, Freeport is served by the Chicago & Northwestern and Rockford by the Chicago & Northwestern and the Burlington. But these latter railroads do not originate coal from the Indiana groups. Of the six railroads serving the Brazil and Linton groups, the Milwaukee alone reaches Beloit. The only other railroad serving Beloit is the Chicago & Northwestern. Exhibit 3, sec. I, p. 1; sec. V, pp. 18, 19, 30. Apparently, the Burlington does not participate in the joint rates from the Indiana groups (R. 1611).

> single-line rates apply, the average distance is 278 miles, or 4 miles greater than the average of 274 miles to the same destinations from the 5 origins on the Chicago & Eastern Illinois in that district. From the Illinois Central points in this group to the 4 representative destinations to which it maintains single-line rates, the average distance is 317 miles, or 43 miles greater than over the routes of the Chicago & Eastern Illinois. * * *

The Commission found (R. 183) that "the transportation conditions over the single-line routes * * * do not differ materially from those over the joint-line routes to the same destinations from other mines in the same group" (R. 1612, see p. 49, *supra*); that "there is no important difference in the average distances over those respective routes"; that "normally, coal sales turn on a price difference of as little as a few cents a ton"; and that "plainly, therefore, only by the establishment and maintenance of a single-rate basis * * * can unjust discrimination and undue prejudice be avoided." It is believed that the Commission's conclusion here is entirely rational, and, as further said by the Commission (R. 183):

> Under the circumstances recited, an extensive showing of injury through the loss of tonnage to particular coal shippers or consumers by reason of discriminatory rates here before us is not required.

United States v. *Trucking Co.*, 310 U. S. 344.

After all the question of the *unjustness* or *undueness* of discrimination or prejudice is for the Commission. The statute does not specify that injury or damage must be shown with the same particularity as necessary to determine and fix reparation claims. The Milwaukee served but 4 of the 30 mines in the Brazil group and but 9 of the 31 mines in the Linton group and yet a witness for that railroad testified that, of the total tonnage moving from those groups to Rockford, the Milwaukee handled under its single-line rates 95.4 percent of that moving from Brazil and 78.5 percent of that from Linton. The witness further said that there was a movement from mines on other railroads taking the higher rates but that it was relatively small as compared with the movement under the single-line rates (R. 668). The natural significance of this testimony is that the lower rates played a considerable part in securing for the Milwaukee the large tonnage of coal moving over its single-line routes to Rockford, and the Commission's findings attach that significance to the evidence (R. 182–183; 206). However, the Milwaukee's brief (pp. 22–23) says that, in its petition for rehearing, it offered to show that, during the period prior to 1934 when the rates to Rockford from all mines in the Brazil and Linton groups were at the same level, it

handled from 60 to 99.07 percent of the tonnage moving to that destination; and it further says that the Commission, in refusing to reopen the case, denied it an opportunity to explain the only statement in the report "that can possibly be construed as supporting the finding that the condemned rates violated Section 3."

This assertion, it is apparent, is unwarranted. Conditions at the mines and at the consuming points presumably have not remained static, and, in any event, if the Milwaukee considered the evidence important, it had ample opportunity to introduce it before the hearings closed. The northern Illinois destinations and Beloit, Wis., afford natural markets for coal produced in the Indiana mine groups and, as found by the Commission, all the mines in the groups in general produce coal of the same quality and grade (R. 206). Differences in rates as great as 17 and 12 cents have their inescapable consequences. Even assuming that during some period prior to 1934 when the rates from all mines in the Brazil and Linton groups were the same the Milwaukee handled from 60 to 99 percent of all coal moving from those groups to Rockford, still it would not be illogical to conclude that the low single-line rates of the Milwaukee played a not inconsiderable part in the recent showing testified to by the Milwaukee's witness of a relatively very large tonnage moving under those rates as compared

with that moving under the higher group, or joint-line, rates. Certainly such differences in rates could reasonably be considered as having an important bearing on the future opportunities of shippers in the groups to market their coal in the destination territory. As in effect found by the Commission (R. 207, 208), with the dual basis of rates continued to northern Illinois and extended to Beloit, there could be no expectation of stabilizing the coal-rate adjustment upon a reasonable and nonprejudicial basis.

As above indicated, the brief of the Ayrshire Collieries, while not attacking the section 3 findings on that ground, in effect asserts that here there could be no unjust discrimination violative of section 2 because the Milwaukee's single-line rates apply from different mine origins than those to which the higher group, or joint-line, rates apply, and because the situation is not one of different rates applying over identical routes. As to the latter, it is seldom that, in the adjustment of rates between points of origin and destination, there are not a good many routes over which the rates apply. As to the point made that the mines within a group are not the same origin points, it seems evident that the Milwaukee cannot, for certain of its rates, treat the mines in a group as different origins and, at the same time, for other of its rates, treat such mines as one origin point. The Milwaukee, while insisting for

purposes of its single-line rates that the mines in the Brazil and Linton groups are distinct origin points, is, nevertheless, party to the group or joint-line, rates which treat all the mines in the respective groups as one origin. From mines on the lines of other railroads to the destinations in northern Illinois served by it and to Beloit, Wis., the Milwaukee is party to the group rates, and, from the mines on its own line to destinations in northern Illinois which it does not reach, the Milwaukee is also party to group rates. The practice of grouping points of origin or destination, or both, has been long in existence and is embodied in many rate structures. The Act's provisions, it is believed, are intended to be adaptable and given a practical application. Appellants' construction of section 2 would read that section out of the Act as to many situations to which it is obviously intended to apply.

In addition to their condemnation of the dual basis of rates, as existing and as proposed, the Commission's findings also applied to the differentials between the respective Indiana groups (R. 210–211). As above pointed out, the Commission, in determining the just and reasonable relations that should be maintained between those groups, found that the differential, Linton over Brazil, which in some instances was 5 cents and others 10, should be stabilized at 10 cents. This was the standard differential, in effect generally to the northwest

and the decline in volume of movement from the Brazil group had been much greater than that from the Linton group (R. 187). The differential, Princeton over Linton, as existing and as proposed, was 7 cents (the standard differential), except that as between Princeton, on the one hand, and Linton mines on the Milwaukee and Illinois Central, on the other, to Rockford and certain other destinations in northern Illinois, the rate difference was 19 cents. As above stated, the evidence showed and the Commission found (R. 183) that there was no material difference between the transportation conditions over the single-line routes of the Milwaukee and Illinois Central and those obtaining over the joint-line hauls. Speaking of this particular adjustment, the Commission said (182) that "between the Linton points on the Milwaukee or the Illinois Central and the Princeton mines the present and the proposed differential is and would be 19 cents instead of the usual 7 cents; and between those same Linton origins and the Boonville mines the difference reflected by the present and proposed rates is 22 cents, instead of the standard differential of 10 cents, or the differential herein approved of 7 cents. What has just been said would be true also under the proposed adjustment to Beloit." The Commission considered and found (R. 207) that the differential maintained by the two carriers was greater than warranted by the respective distances. The fair and reasonable differential between all mines

in the respective Linton and Princeton groups to all of these destinations was found by the Commission to be 7 cents (R. 187).

The Commission considered that the Boonville group should be merged with the Princeton group and accorded the same differential of 7 cents (R. 186). As to this the Commission found (R. 208):

> 13. The difference in the distances from the single important mine in the Boonville group and from nearby mines producing similar coal in the Princeton group to Beloit and the northern Illinois destinations is small. A merger of those two groups will increase the average distance from the Princeton district to the 12 representative northern Illinois destinations as well as to Beloit by only 8 miles. The movement from the Boonville group to this destination territory has been and is negligible, even though its customary differential over Princeton has been only 3 cents. Accordingly, the rates from the Boonville mines to these destinations should not exceed those from the Princeton district to the same destinations.

From the above it will be seen that, except for the fact that the Commission disapproved the advantage secured to the Milwaukee and Illinois Central by their comparatively low single-line rates and except for the Princeton-Boonville merger, the Commission's action in respect of the differentials between the Indiana groups was not materially dif-

ferent than what was proposed, including the proposal of the Milwaukee and Illinois Central through the medium of the group, or joint-line, rates in which they joined. The grievance especially asserted by appellants appears to relate to the differentials found by the Commission to be fair and reasonable as between the Indiana groups and certain Illinois groups, particularly Springfield.

As above shown, following the 1930 reduction in Illinois intrastate rates, required by the Illinois Commission, the Milwaukee established from mines on its line in the Brazil and Linton groups corresponding reductions in its single-line rates to Rockford and certain other northern Illinois destinations served by it. Subsequently, that carrier raised its single-line rates from the Linton group by 5 cents, so as to make the differential Linton over Brazil on its line 10 cents and, thereafter, the Illinois Central made like reductions in its single-line rates from mines on its line in the Linton group to northern Illinois destinations served by it (R. 177). The Milwaukee and Illinois Central single-line rates to Rockford and certain other northern Illinois destinations were thus established at a lower level than the group, or joint-line, rates from the Indiana groups and at a level for the most part meeting the reductions in the Illinois intrastate rates. And this relation was to be continued, since the proposed increases to northern Illinois were generally the same from all origins in the Illinois and Indiana

groups, including those on the Milwaukee and Illinois Central.

As stated, the grievance particularly asserted by appellants appears to relate to the differentials found fair and reasonable as between the Indiana groups and certain Illinois groups. While appellant Ayrshire Collieries contends that the Commission was without authority to eliminate the dual basis of rates, its brief refers (p. 49) to the testimony of an operator of coal mines who stated he thought one level of rates preferable but that that should be the level of the Milwaukee rates, which are properly related to the rates from the Illinois groups (R. 1466).

However, as above shown (p. 20–21), it appeared from exhibits of production and tonnage shipped that, to Beloit and the principal coal consuming destinations in northern Illinois, the shipments from the Indiana mines in 1941 showed an increase over the year 1936 considerably greater than that shown for the Illinois mines. Furthermore, the fact that the Milwaukee and Illinois Central had by their reductions in single-line rates from Indiana mines (made just prior to 1936, R. 177) met the reductions in Illinois intrastate rates previously made does not establish that such single-line rates are properly related to the rates from the Illinois groups. As found by the Commission (R. 176), while "for some years prior to 1930 the so-called standard differentials

applied to most of those northern Illinois destinations, there appears to have been then, as now, no fixed relation either between the Indiana groups or between those groups and southern Illinois or Springfield to Rockford, Freeport, and Dixon, the principal coal-consuming points in this destination territory." Moreover in 1925, the railroads "voluntarily reduced the rates from the respective Indiana groups to Rockford by 5, 6, 8 and 28 cents, and made no reductions in the rates from any of the Illinois groups" (R. 176). There followed in 1930 the order of the Illinois Commission requiring the reductions in Illinois intrastate rates, which reductions became effective in 1934 (R. 177).

The appellants' briefs set forth comparisons of rates and mileages to the northern Illinois destinations from the Indiana groups, on the one hand, and Southern Illinois and Springfield (particularly the latter), on the other hand, to the end, judged by their statements, of showing capriciousness and arbitrariness on the part of the Commission. But the comparisons do not compare like with like. They ignore the basic principles applied by the Commission. Early in its report the Commission said (R. 170):

> Illinois has eight coal-producing districts, of which Springfield in central Illinois has long been the largest in area and southern Illinois the largest in production. Up to

> recent years southern Illinois was regarded as the base Illinois group, but in the last decade the Fulton-Peoria group in northwestern Illinois has materially increased its production, and in *Midland Electric Coal Corp.* v. *Chicago & N. W. Ry. Co.*, 232 I. C. C. 5, and *Fairbanks-Morse & Co.* v. *Alton & S. R., supra,* that group was used as the base from Illinois mines to all points in Iowa and to certain points in southern Wisconsin.

In the comparisons later made in the report, Fulton-Peoria is used and frequently referred to as the base Illinois group. Appellants may not agree that the Commission was right in using Fulton-Peoria as the base. But generally, as in Indiana, the group nearer destination points is used. In Illinois, this has not been the case. For reasons stated by the Commission the northern Illinois group has not been used as the base (R. 184). Instead southern Illinois, a big producer, has been used and is still used to many destinations. Springfield, large in area but not so in production, has not been used as the base group in Illinois. So far as appears from their briefs, the appellants do not assert that it should be. For reasons given by the Commission, Fulton-Peoria, lying north of Springfield, has been of recent years used as the base to the destination territory specified by the Commission. In any comparisons of rates and mileages, using

Fulton-Peoria as the base, it will be found that a quite different picture is shown than appears from appellants' briefs. Moreover, even using Springfield for comparison, there is another picture than that afforded by appellants' comparisons.

Appellants point out that the rate approved by the Commission from the Brazil group to Rockford is $2.07 for 251 miles and that the approved rate from the Springfield group to Rockford is only $1.95 for 257 miles, and they say such an adjustment can not be sound. But many rates can be found in the adjustment approved by the Commission which reflect the reverse condition. Thus, to Forreston, Ill., an important destination, the distance is 36 miles greater from the Brazil group than from the Springfield group, but the approved Brazil rate is only 5 cents higher than that approved from Springfield, and to Sterling, Ill., another important destination, the distance is 103 miles greater from the Brazil group than from the Springfield group, but the approved rate is only 14 cents greater from Brazil than from Springfield. Under the so-called Indiana-Illinois distance scale of reasonable maximum rates for application from base groups to particular destinations in this general territory, set forth in Appendix C to the Commission's report and used by the Commission as one of the measurements to be considered in passing upon the lawfulness of these

rates, the Brazil rate to Sterling would be 40 cents higher than that from Springfield whereas, as pointed out, the approved spread is only 14 cents. To Dixon, Ill., the distances are 177 miles from the Springfield group and 257 miles from the Brazil group, a difference of 87 miles and to Rochelle, Ill., the distances are respectively 200 and 255 miles, a difference of 55 miles. Nevertheless, the Indiana operators insisted that the Commission prescribe the same rate from both origin groups to each of these destinations.

In order to show that comparisons based on distance alone are misleading, consideration should be given to some of the other rates in the adjustment approved by the Commission which viewed only from a distance standpoint result in rate relations favorable to Indiana. To Dixon, the approved rate from the southern Illinois group for 312 miles is $2.05 and that from the important Princeton-Boonville group in Indiana, for about 355 miles is $2.06, or a spread of only 1 cent for a difference in distance of 43 miles. To Sterling the approved rate is $2.05 for 329 miles, from the southern Illinois group and $2.06 for 379 miles from the Princeton-Boonville group or again, a spread of 1 cent for a difference in distance of 50 miles. A number of additional such illustrations can be found. These latter comparisons are with the more distant groups in each of the states

and are fair because both mine groups are in the same relative position in the respective states. That cannot be said of the comparisons between the Brazil and Springfield rates, for Brazil is a base group and Springfield a differential group, and the comparison therefore is improper and valueless because the groups are not in the same relative position in the rate adjustment. From Illinois, Fulton-Peoria is the base group and Springfield is uniformly related to the Fulton-Peoria group on the basis of a differential, usually 30 cents, which is on a substantially lower level than any of the base group rates in this adjustment. Obviously, therefore, any comparison between the Brazil and Springfield rates is of unlike things and must be evaluated accordingly.

Even though, based on recognized principles, a coal rate adjustment were 100 percent perfect, presumably, if those principles were ignored, seeming inconsistencies could be pointed out. Just as in cases of grain rates and other like adjustments, coal rate adjustments present complex and difficult problems. But it cannot be doubted that here the Commission proceeded in a rational manner and, in fact, prescribed an entirely fair and reasonable adjustment of rates. *Board of Trade of Kansas City* v. *United States*, 314 U. S. 534; *Ohio* v. *United States*, 292 U. S. 498, 506, 511.

IV

THE COMMISSION DID NOT EXCEED ITS AUTHORITY IN APPROVING AND PRESCRIBING THE ADJUSTMENT OF RATES TO BE ESTABLISHED

Both the brief of the Ayrshire Collieries (pp. 55–60) and that of the Milwaukee (pp. 27–31) contend that the Commission's order was beyond its authority because not affording the carriers alternative methods of removing the discrimination and because the Milwaukee, for example, although having exclusive control of its low single-line rates, did not, with like effectiveness, control the higher joint-line rates. Both briefs rely on *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627.

In the first place, it should be clearly understood that the order is not, as suggested in Appellants' Brief in Opposition to the Motion to Affirm (p. 18), merely an order to desist from unjust discrimination, but is an order under section 15 (1) determining and prescribing the just and reasonable future rates. This is recognized in the allegations of appellants' bills (R. 9, 14, 38, 39) that the order requires the railroads "to publish and maintain rates in the future on a certain basis," and that that is the fact can be quickly demonstrated.

The present rates from the Illinois origin groups to Beloit are constants. There is no proposal to change them. As shown in Appendixes

A and D to the Commission's report, they are the rates which will apply and be applied for the future to Beloit, and they are shown in Appendix D as approved rates (R. 220). Now, Conclusion 2 to the report says that the rates from the Indiana groups to Beloit will result in undue preference and prejudice as between "(c) the Indiana districts on the one hand, and the Illinois districts on the other * * * to the extent that such rates would reflect rate relations between such districts and the respective points in each of such districts to Beloit, which differ from the relations reflected by the rates set forth as approved in appendices A and D to this report" (R. 210–211). It is obvious that with the rates from the Illinois groups to Beloit remaining constant, the relationships which the Commission requires to be maintained between the rates from Indiana to Beloit and the rates from Illinois to Beloit can be established only by the publication of the rates from the Indiana groups to Beloit that are set out in the report as approved rates. Those rates are, therefore, prescribed rates under the provisions of section 15.

The rates from Indiana to Beloit being specifically prescribed, it is clear that the interstate rates from Indiana to northern Illinois destinations are also specifically prescribed rates. The outstanding order of the Commission in the *Fairbanks-Morse* case, *supra*, requires the rates from the Indiana groups to Beloit to be not more than

15 cents higher than the rates to Rockford. To illustrate, with the rate from Brazil to Beloit prescribed at $2.22, as just demonstrated, the carriers may not under that order maintain less than the approved rate of $2.07 from Brazil to Rockford (R. 216). The same is true, of course, of the rates from the other Indiana groups.

So that, the rates approved by the Commission are the prescribed rates. That they are rates which the Commission determined would, for the future, be reasonable as well as nondiscriminatory is shown by its findings No. 19 (R. 210) and Conclusion No. 6, the latter reading (R. 212):

> 6. Rates in accordance with the foregoing findings and conclusions shall be made effective, so far as practicable, from all origins to all destinations at one and the same time, and will result in a reasonable, nondiscriminatory, and nonprejudicial adjustment from Indiana, Illinois, and western Kentucky to all points in the destination territory.

In contrast to the order here, the Commission's order involved in the *Texas & Pacific case, supra,* was an alternative order, leaving to the carriers whether to raise the preferential rates from Texas origins to the port of New Orleans or to lower the prejudicial joint rates from the same origins to the Texas ports. Originally the complaint charged, not only that the rates were unduly preferential and prejudicial, but also that the joint

rates to the Texas ports were unreasonable. The latter allegation was, however, withdrawn. The Texas & Pacific was party to the joint rates to the Texas ports and was, at the same time, charging from common points single-line rates the same in amounts for the much longer hauls to the port of New Orleans. This, it was contended, took traffic away from territory naturally tributary to the Texas ports, and the Commission found undue prejudice to the Texas ports and preference of New Orleans. Its order permitted the equalization to continue to a point where the hauls to New Orleans were greater by 25 percent, but for differences in distance in excess thereof, it prescribed certain minimum differentials. These differentials could, however, be either added to the New Orleans rates or deducted from the rates to the Texas ports, or they could be in part added to the one set of rates and in part deducted from the other set. Accordingly, the order was not an order under section 15 (1), since it did not remove the discrimination by prescribing the rates to that end.

It left with the carriers alternative methods of removing the discrimination, but the difficulty was that, while the Texas & Pacific could, acting alone, increase its individual, or single-line, rates to New Orleans, it was not left with an actual election, because it could not lower the joint rates to the Texas ports without the consent of the other

carriers, parties to those rates. This is precisely what the decision holds.[22] It says (289 U. S., at p. 650) that "Where an order is made under § 3, an alternative must be afforded," and that "The situation must be such that the carrier or carriers if given an option have an actual alternative." However, in a footnote, referring to the requirement that an alternative must be afforded, the opinion says:

> This is not true of an order pursuant to § 15 (1), prescribing maximum or minimum or maximum and minimum rates; but the present orders were not issued under that section.

Accordingly, it is evident that appellants altogether misconstrue the decision in the *Texas & Pacific case, supra.* If it is read having in mind that the order in the case was in fact an alternative order,[23] it will be seen that its statement that an alternative must be afforded has no application here but, instead, that it is square authority that that "is not true of an order pursuant to § 15 (1)."

---

[22] The first holding was that ports, as such, were not localities within the meaning of section 3; that, as to traffic passing through them they were not susceptible to the undue prejudice or preference referred to; that the section's prohibitions were intended for the protection of shippers or shipper localities; and that, taking for example the origin localities in Texas, such origins were benefited rather than hurt, since the rate adjustment complained of afforded them a choice of routes and ports.

[23] See dissenting opinion, 289 U. S., at p. 668.

In *Youngstown Sheet & Tube Co.* v. *United States*, 295 U. S. 476 (opinion also by Justice Roberts) the distinction is further emphasized between a section 3 alternative order and one pursuant to section 15 (1), prescribing the rates or the maximum or minimum rates, etc. The traffic involved was coal moving from so-called river mines by barge to Colona, Ohio, and thence by rail to Youngstown. The railroads complained that the existing exbarge rates of 77 cents per ton were too low, threatening the rate structure, and asked to be permitted to establish rates of $1.02 cents. At the same time certain inland mines, shipping all-rail to Youngstown complained that the exbarge rates unduly preferred the river mines and prejudiced them. Based in part on comparison with rates in the general coal rate structure, the Commission determined and prescribed 90 cents as the minimum reasonable rate. Before this Court, the steel companies contended that the order was invalid because not affording the carriers an alternative. In answer, the Court said that there was no merit to the contention; that, while it was true that the Commission found undue prejudice to shippers all-rail, in essence its order was a section 15 order and not a section 3 order.

In the *Youngstown case, supra,* just as in the *Texas & Pacific case, supra,* the reason for terming an alternative order a section 3 order, was, it is apparent, to distinguish such an order from one

made under section 15. But in the *Youngstown case*, the Commission did proceed under section 15 (1). On the evidence before it, it determined and prescribed 90 cents as the minimum reasonable rate to be charged, and the Court particularly emphasizes the importance of that finding. Answering contentions that the order was invalid because the Commission raised the rate to prevent disruption of the rate structure and thus violated principles announced in *United States* v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, the Court said (p. 480):

> In the first place the Commission here found the required minimum reasonable; in the second place, it had, after full investigation * * * held the existing rate structure * * * just and reasonable, and the ex-river rates here in issue, in contrast too low. Comparisons of other rates in the same or adjacent territory, while not a conclusive test of reasonableness of a rate under investigation, have probative value. There was much other evidence * * *. The order of the Commission was based primarily upon the reasonableness of the minimum prescribed. The existing rate structure furnished support for the finding of reasonableness.[24]

[24] The Court had previously summarized the Commission's findings, saying (p. 479):

"The Commission finds: These prescribed minima are reasonable; lower rates would create undue discrimination against shippers in origin districts who cannot use the

The importance of the emphasis laid by the decision on the Commission's finding of reasonableness of the prescribed minimum rate is that that finding marks the distinction between an alternative order and an order pursuant to section 15 (1). In the *Texas & Pacific* case, *supra*, it was said, as just shown, that the requirement of affording an alternative did not apply to an order made pursuant to section 15 (1). The only issue in that case was of undue preference and prejudice, but, if the record had contained the enabling evidence, the Commission could, presumably, have determined and prescribed the just and reasonable rates, or maxima or minima, to the end of removing the discrimination found. Section 15 (1) provides substantially that, whenever the Commission is of the opinion that any individual or joint rates, or any individual or joint regulations or practices, are or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in viola-

water-rail route, and would tend to disrupt the rate structure, and to destroy the proper differentials between various producing districts on shipments to Ohio destinations. These findings have ample support in the evidence."

It will be noted that here again the decision gives first importance to the Commission's finding that the prescribed minima are reasonable. It mentions the finding that lower rates would disrupt the rate structure but, when it comes to giving weight to that finding, it apparently regards the existing rate structure principally important as furnishing support for the prescription of the reasonable minimum rate to be charged.

tion of the Act, "the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate * * * or rates * * * to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged * * *." Accordingly, since the violations specified by the section as clothing the Commission with authority to act are in the disjunctive, it is clear that, upon findings of undue preference and prejudice alone, the Commission is empowered to determine and prescribe what will be the just and reasonable rates, individual or joint, in such case to be thereafter observed. But, as shown by the statute, if the Commission is to prescribe, it must first determine [25] what will be the just and reasonable future rates, and, to do that, the Commission must have before it the enabling evidence. In the *Texas & Pacific* case, *supra*, presumably such evidence was lacking, but in the present case the enabling evidence was ample.[26]

[25] This determination is the finding that marks the distinction between an alternative order and an order pursuant to section 15 (1). Existing unlawfulness other than that of undue preference and prejudice need not be found, but, as stated, if the Commission is to prescribe, it must first determine, or find, what will be the just and reasonable future rates, or the maxima or minima, and that is a finding in addition to the findings necessary where the Commission simply orders removal of undue preference and prejudice found.

[26] Since in an I. & S. case under section 15 (7) what is

Appellants, in their brief in opposition to the motion to affirm (p. 18) assert that it is no answer to their contentions to say that the order here was one pursuant to section 15 (1) and not a section 3 order, since all orders of the Commission are entered under section 15 (1). But this wholly ignores the distinction between section 3 alternative orders and orders pursuant to section 15 (1) pointed to in the two decisions of this Court, above discussed, and it also ignores the plain language of section 15 (1). Except for the minimum rate power given the Commission in 1920, section 15 (1) in substantially its present form was enacted by the Hepburn Act of 1906 (34 Stat. 584, 589–590), when for the first time the Commission was empowered to prescribe future rates. In addition to the authority conferred to prescribe maximum rates and to prescribe regulations and practices, the Commission was empowered to prescribe divisions of joint rates, to establish through routes and maximum joint rates and to determine and fix maximum reasonable allowances. The paragraphs comprizing section 15 were not at that time given numbers, but the last paragraph thereof

---

involved is proposed rates, such a case, generally speaking, brings in issue all manner of future lawfulness, and particularly the fundamental prerequisites of lawfulness, that is, that the proposed rates will be reasonable, nondiscriminatory and nonprejudicial. That the parties were fully apprized that the present or existing rates were also in issue and that there was ample evidence in respect thereof has been discussed and shown in Chapter II, *supra*.

(which now appears as paragraph 14) provided that:

> The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of an order under the provisions of this Act.

The Commission had always issued alternative orders, or practically so. It may have had that authority under section 15, although, prior to 1906, that section spoke only of "a notice to said common carrier to cease and desist from such violation" (24 Stat. 384); but it seems especially plain that it had the authority under the provision of section 12, authorizing and requiring the Commission "to execute and enforce the provisions of this part."[27] This authority necessarily empowers the Commission to make orders (Cf. *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402, 407), because in the case of administrative provisions such as those in section 3, enforcement is possible only through proceedings and orders of the Commission; that is to say, such provisions cannot be enforced directly in court. In any event, it is clear from the Court's decisions (see also *St. Louis, S. W.*

[27] This provision of section 12 provides:

"The Commission is hereby authorized and required to execute and enforce the provisions of this part; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States * * * to institute in the proper court and to prosecute * * * all necessary proceedings for the enforcement of the provisions of this part * * *."

Ry. Co. v. *United States*, 245 U. S. 136, 145) that the Commission has authority to make a section 3 alternative order and that such authority is a thing distinct and apart from its authority under section 15 (1).[28]

[28] This is further borne out by the penalty provisions (Sec. 16 (8)) which attach penalties for disobedience, not only of sections 15 and 13 orders, but also of section 3 orders. However, the fact that section 3 orders are distinguished from orders pursuant to section 15 (1) does not mean that when, upon findings of undue preference and prejudice, the Commission proceeds under section 15, it is not enforcing the prohibitions of section 3. Section 15 (1) does not declare anything unlawful. That it relies for unlawfulness on other provisions of the Act is shown by the fact that after specifying unreasonableness, unjust discrimination and undue preference or prejudice, it says or otherwise in violation of any of the Act's provisions. Moreover, this is made doubly plain by the decision in *Wisconsin R. R. Comm.* v. *C. B. & Q. R. R. Co.*, 257 U. S. 563. In that case this Court construed that particular provision of section 13 (4) which authorizes the Commission to act on State rates whenever it finds that they cause any unjust discrimination against interstate commerce, which, the section says, is hereby forbidden and declared unlawful. The Court interpreted the clause as forbidding State rates so low as to burden the interstate rates and, in doing so, it relied, among other things, on the fact that Congress picked out that particular clause to be followed by the phrase "which is hereby forbidden and declared to be unlawful." This brings out that the preceding clause as to State rates that cause undue prejudice against interstate shippers is not followed by a like phrase, presumably because already declared unlawful by section 3. *Houston & Texas Ry.* v. *United States* (*Shreveport* case, 234 U. S. 342). Thus, since section 13 (4) relies on section 3 for prohibitions against undue preference and prejudice, it seems plain that that is also true of section 15 (1).

The decision in the *Texas & Pacific case, supra,* in addition to holding that, where an order is made under section 3, an alternative must be afforded, holds that, in order that a carrier be guilty of undue prejudice, it must control both the prejudicial and preferential rates. It says in this connection (289 U. S. at p. 650):

> A carrier or group of carriers must be the common source of the discrimination—must effectively participate in both rates, if an order for correction of the disparity is to run against it or them. Where an order is made underr § 3 an alternative must be afforded.

This, it is evident, plainly attributes the need for effective participation in both rates to the fact that, in the case of a section 3 order (though not one pursuant to section 15 (1)), an alternative must be afforded. The decision had previously referred (p. 649) to the fact that the rule requiring control of both rates was one consistently followed by the Commission; and, speaking of the rule, the Commission's report said (*Galveston Com. Asso.* v. *Galveston, H. & S. A. Ry. Co.*, 160 I. C. C. 345, 356):

> * * * But it is contended for New Orleans that in order to be guilty of undue prejudice a carrier must control both the prejudicial and the preferential rate, because the method of removing the prejudice and preference must be left to the

> discretion of the carrier and the order requiring its removal must be in the alternative. This proposition finds support in *Ashland Fire Brick Co.* v. *S. Ry Co., supra,* and subsequent cases, such as *Allen Mfg. Co.* v. *A. G. S. R. R. Co.,* 126 I. C. C. 515, and *Hallsboro Mfg. Co.* v. *Atlantic Coast Line R. Co.,* 157 I. C. C. 124 * * *.

Referring to the same thing, the brief of the Ayrshire Collieries says (p. 55):

> We contend also that an order to remove an undue preference or prejudice must accord to the carriers affected an alternative of either reducing the higher rate or increasing the lower, or a combination of the two. To do this, the carrier or carriers involved must control both rates.

To repeat, therefore, the important consideration entering into the *Texas & Pacific case, supra,* is that there the order was a section 3 alternative order. That being the case, it was necessary that the carriers involved control both rates. Where, however, the order is one pursuant to section 15 (1), prescribing the maximum or minimum rates, etc., the decision clearly says that the requirement of affording an alternative does not apply, from which it follows that, in such case, there is no need that the carriers control both rates. The reason for this is plain on the face of the statute. Upon findings of undue preference or prejudice, section 15 (1) empowers the

Commission to determine and prescribe what will be the just and reasonable individual or joint rates in such case to be thereafter observed. Where through routes and joint rates already exist, there is no occasion to establish them. Section 15 (1) does not qualify the Commission's power where dealing with joint rates. Presumably Congress knew that cases of undue preference and prejudice confined to individual rates would cover but a minor portion of the field of authority intended to be placed with the Commission.

In *Houston, E. & W. Texas Ry.* v. *United States* (*Shreveport case*), 234 U. S. 342, this Court sustained as valid a Commission order requiring removal of undue preference and prejudice caused by the relation of intrastate and interstate rates. That order afforded an alternative and was made under section 3. Section 13 (4), enacted in 1920, empowered the Commission to deal directly with unduly preferential and prejudicial intrastate rates, clothing it with authority to prescribe the rates, or the maxima or minima or maximia and minima thereafter to be charged "in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination." The legislative history of this provision shows that its purpose was to do away with the need for alternative orders by empowering the

Commission to prescribe the rates, or the maxima or minima.[29] True, this is also shown by the succeeding words "in such manner as, in its judgment will remove such advantage, preference, prejudice, or discrimination." However, there is no real distinction in this respect between section 13 (4) and section 15 (1). While section 13 (4), in empowering the Commission to prescribe the intrastate rates thereafter to be charged does not in terms require that they be reasonable, it may not be assumed that the Commission is authorized to prescribe for the future other than reasonable State rates. That reasonableness of the rates prescribed is quite as essential in the case of intrastate rates as in the case of interstate rates is shown by decisions of this Court. *Georgia Comm.* v. *United States*, 283 U. S. 765, 770; *United States* v. *Louisiana*, 290 U. S. 70, 78. It seems beyond dispute that Congress, in enacting section 13 (4),

[29] Statement of Senator Cummins, Chairman of Senate Committee on Interstate Commerce (Cong. Rec., Vol. 59, pp. 141–143). Senator Cummins, speaking of the *Shreveport case*, *supra*, and others, said *inter alia*, at p. 142:

"We have not gone beyond the principles announced * * * we have simply given to the commission the authority to remove the discrimination when established. As it is now all that can be done is for the commission to go forward from time to time and condemn and enjoin the State rates until they finally reach the level which, in the judgment of the commission, is no discrimination."

intended to authorize a more effective means than alternative orders for dealing with discriminatory rates and it is not believed that, in empowering the Commission to remove discrimination in interstate rates, a lesser, more restricted, authority was conferred.

The brief of appellant Ayrshire Collieries contends (p. 60) that the order is invalid because the Commission did not find that the preferential rates were noncompensatory. There is nothing in the *Youngstown case, supra,* indicating that such a finding is necessary. Cf. *Scandrett* v. *United States,* 32 F. Supp. 995 (D. Oreg.), affirmed per curiam 312 U. S. 661. Moreover, this Court has repeatedly said that the evil of discrimination was the principal thing aimed at by the Act. *Shreveport case, supra,* (p. 356); *Louisville & N. R. R. Co. et al.* v. *United States,* 282 U. S. 740, 749. In *Interstate Commerce Commission* v. *Inland Waterways Corp.,* 319 U. S. 671, the Court, after referring to the zone of reasonableness, said, in effect, that while rates may lie within that zone, nevertheless they may result in undue prejudice and discrimination. Cf. *Jefferson Island Salt Mining Co.* v. *United States,* 6 F. 2d 315 (N. D. Ohio). In any event, in the present case, considering together the interstate and intrastate adjustments, it is inescapable that the existing interstate as well as intrastate rates were burdensomely low. This is

shown throughout the report and particularly by the Commission's findings in the intrastate case (R. 200, 202) and its formal finding No. 17 (R. 209), where it is said:

> 17. Respondents' loss in revenue as a direct result of the relatively low level of the intrastate rates assailed is not less than $55,000 per annum, and as an indirect result thereof by reason of the relatively low level of the interstate rates from Indiana to the same northern Illinois destinations, which are held down by the intrastate rates referred to, respondents are suffering an additional loss of revenue of not less than $50,000 per annum. Under the rate adjustment herein approved as reasonable and otherwise lawful from Illinois and Indiana to these northern Illinois destinations, respondents' annual revenues may reasonably be expected to be increased by at least the foregoing amounts.

The above, it will be seen, finds that the Indiana interstate rates as well as the Illinois intrastate rates are so low as to burden the carriers' revenues and, in effect, that, to remove that burden, they, as well as the Illinois intrastate rates, should be raised to the approved bases which the Commission finds would be reasonable and otherwise lawful from the respective Indiana and Illinois groups. The whole rate adjustment,

interstate and intrastate, was, of course, an integrated adjustment; and the Commission had previously said (R. 200) that, taken as a whole, and excluding the rates to Chicago which are affected to an unusual degree by competition "this integrated adjustment of Illinois intrastate and Indiana interstate rates to northern Illinois reflects the lowest level of any important track-delivery, coal-rate adjustment in the country." The Commission's order directly operating on the interstate rates from Indiana was the order in I. & S. No. 5139, but the Commission's findings (Conclusion No. 6, R. 212) made the whole adjustment, intrastate and interstate, approved as reasonable, nondiscriminatory, and nonprejudicial, an inseparably related and integrated adjustment. And, while certain of the interstate rates from the Indiana groups, both existing and proposed, were thereby lowered or left the same, the existing rates were for the most part raised. Moreover, the change of particular importance effected in the interstate rates from Indiana was that the adjustment of the single-line rates of the Milwaukee and Illinois Central which the Commission found would be reasonable, nondiscriminatory, and nonprejudicial, required that those rates be increased to the group, or joint-line, bases, so approved (R. 187, Appendix A to Report, R. 213–216). They were, therefore, pre-

scribed minima, and, as such, found reasonable and nondiscriminatory.

The Commission's Conclusion No. 3 (R. 211) finds that "the proposed rates from the Indiana districts to the northern Illinois destinations and to Beloit would be unreasonable to the extent that they would exceed the rates or rate bases set forth in the column headed 'Rate approved in this proceeding' in appendix A to this report." It follows, accordingly, that the rates approved from the Indiana groups are for the most part rates found and prescribed as reasonable minima and maxima or as *the* reasonable rates.

Appellants say that the Commission's action here conflicts with the Court's decision in *United States* v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, whereas it was in effect undertaken in response to that decision. In the case in question the Court pointed out (pp. 509–510) that the Commission had "not adjudged the fairness of the relation now subsisting between Illinois and Indiana rates;" that "the whole situation is subject to the power of the Commission," in that the Commission "may fix the fair relation between one line and another, and may build the structure of the rates accordingly." By its decision here under attack the Commission attempted to do, and did, what this Court plainly indicated by the above language it should do.

CONCLUSION

For the reasons stated, the judgment of the District Court should be affirmed.

GEORGE T. WASHINGTON,
Acting Solicitor General.
WENDELL BERGE,
Assistant Attorney General.
EDWARD DUMBAULD,
DAVID O. MATHEWS,
Special Assistants to the Attorney General.
DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission.
NELSON THOMAS,
Attorney,
DANIEL H. KUNKEL,
Attorney,
Interstate Commerce Commission,
Of Counsel.

APRIL 1947.

APPENDIX

Section 2 of the Interstate Commerce Act (Feb. 4, 1887, 24 Stat. 379, 49 U. S. C. 2, as amended, provides as follows:

> That if any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this part, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Section 3 (1) of the Interstate Commerce Act, as amended, particularly by the Act of September 18, 1940, 54 Stat. 902, provides as follows:

> (1) It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever;

or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

Section 15 (1) of the Interstate Commerce Act, as amended, provides as follows:

(1) That whenever, after full hearing, upon a complaint made as provided in section 13 of this part, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this part for the transportation of persons or property as defined in the first section of this part, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this part, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this part, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or

minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

Section 15 (7) of the Interstate Commerce Act, as amended, provides:

(7) Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension,

may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the Commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after the date this amendatory provision takes effect, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and

reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

U. S. GOVERNMENT PRINTING OFFICE, 1941

FILE COPY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1946.

No. 467

AYRSHIRE COLLIERIES CORPORATION,
a corporation, et al.,
Appellants,

vs.

UNITED STATES OF AMERICA, et al.,
Appellees.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,
Appellant,

vs.

UNITED STATES OF AMERICA, et al.,
Appellees.

Appeals from the United States District Court for the Southern District of Indiana, Indianapolis Division.

BRIEF FOR

The Alton Railroad Company (Henry A. Gardner, Trustee), et al., Railroad Appellees,

and

Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau, Appellees.

INDEX.

	Page
Opinions Below	2
Jurisdiction	2
Statutes Involved	2
Statement of the Case	2
Summary of Argument	13
Argument	20
I. By Its Order the Commission Has Done What this Court Has Said It Had the Power to Do and Should Do With Respect to This Very Rate Adjustment	20
II. The Commission Had Jurisdiction to Enter Its Order	24
(A) The Commission had jurisdiction to find the present rates and relationships unlawful and to require them to be changed	24
(B) The Commission did not overstep its jurisdiction in dealing with the rates to Beloit via the Southern Railway from Princeton and Boonville and via the single line routes of the Milwaukee Railroad from Brazil-Clinton and Linton-Sullivan	33
III. The Commission's Conclusions That the Present and Proposed Rates From Indiana Are Unlawful in Violation of Sections 2 and 3 of the Act Are Supported By Substantial Evidence and By Adequate Findings	37

IV. The Commission's Findings and Order Are Not Invalid Because of Any Lack of Effective Control on the Part of the Milwaukee Railroad Over the Higher Joint Line Rates 53

V. There Is Substantial Evidence to Support the Prescription of the Relationships Reflected By the Rates Set Forth in the Report as Approved Rates 60

Conclusion 73

Appendix 75

TABLE OF CASES.

Advance in Rates—Western Case, 20 I.C.C. 307..... 27

Akron, C. & Y. Ry. Co. v. United States, 22 F. (2d) 199 27

Albany Port District Commission v. Ahnapee & W. Ry. Co., 219 I.C.C. 151..... 59

Alton R. Co. v. United States, 315 U. S. 15..... 69

Appalachian Power Co. v. N. & W. Ry. Co., 144 I.C.C. 333 67

Baltimore & Ohio R. Co. v. United States, 65 F. Supp. 962 69

Beaumont, Texas, Port Commission v. Abilene & S. Ry. Co., 253 I.C.C. 127..... 59

Board of Trade of Kansas City v. United States, 314 U. S. 534 ..... 49, 73

Boger & Crawford v. Seaboard Air Line Ry. Co., 157 I.C.C. 227 40

Central R. R. Co. of New Jersey v. United States, 257 U. S. 247 57

Chesapeake & Ohio Ry. Co. v. United States, 11 F. Supp. 588, 296 U. S. 187..... 51

Coal from Indiana to Illinois, 197 I.C.C. 245, 200 I.C.C. 609 ..... 6, 21, 23
Coal Rates from Oak Hills, Colo., 30 I.C.C. 505 35
Coal to Beloit, Wis., and Northern Illinois, 263 I.C.C. 179 ..... 2, 3
Coal Trade Association of Indiana v. Algers, W. & W. Ry. Co., 232 I.C.C. 356 46
Fairbanks-Morse & Co. v. Alton & S. R., 251 I.C.C. 181 ..... 7, 56
Federal Power Commission v. Natural Gas Pipeline Co., 315 U. S. 575 ..... 65, 69
Franklin Limestone Co., Inc., v. Alabama G. S. R. Co., 246 I.C.C. 753 59
Hanna Furnace Corp. v. United States, 53 F. Supp. 341 68
Illinois Coal Cases, 32 I.C.C. 659 73
Illinois Coal Traffic Bureau v. Ahnapee & W. Ry. Co., 204 I.C.C. 225 73
Interstate Commerce Commission v. Union Pacific R. Co., 222 U. S. 541 69
Intrastate Rates on Bituminous Coal in Illinois, 182 I.C.C. 537 5
Iron Ore Rate Cases, 41 I.C.C. 181 67
Langdon v. Pennsylvania R. Co., 194 Fed. 486, 208 Fed. 145 40
Lignite Coal from North Dakota, 126 I.C.C. 243 28
Manufacturers Railway Co. v. United States, 246 U. S. 457 60
Mississippi Valley Barge Line Co. v. United States, 292 U. S. 282 ..... 53, 68
Northeast Kentucky Coal Bureau v. Chesapeake & O. Ry. Co., 206 I.C.C. 445 51

Ohio-Kentucky Associated Industries v. Ahnapee & W. Ry. Co., 256 I.C.C. 137 58
O'Keefe v. United States 240 U. S. 294 69
Passenger Fares, District of Columbia, Nearby Virginia, 256 I.C.C. 769 67
Pennsylvania R. Co. v. International Coal Mining Co., 173 Fed. 1, 230 U. S. 184 40
Rates on Coal from Missouri, 159 I.C.C. 617 46
Richmond Chamber of Commerce v. S. A. L. Ry., 44 I.C.C. 455 40
Scripps-Howard Radio, Inc. v. Federal Communications Comm., 316 U. S. 4 69
Sioux City Term. Ry. Switching, 241 I.C.C. 53 28
Swayne & Hoyt, Ltd. v. U. S., 300 U. S. 297 49
Texas & Pacific Ry. Co. v. United States, 289 U. S. 627 ..... 54, 57, 58
United States v. Chicago Heights Trucking Co., 310 U. S. 344 ..... 17, 40, 46, 47, 52
United States v. Chicago, M., St. P. & P. R. Co., 294 U. S. 499 ..... 6, 10, 13, 20, 21
United States v. Pierce Auto Lines, 327 U. S. 515 53
Virginia Railway v. United States, 272 U. S. 658 60
Western Paper Makers' Chemical Co. v. United States, 271 U. S. 268 27
Youngstown Sheet & Tube Co. v. United States, 295 U. S. 476 55

Statutes.

Interstate Commerce Act, U. S. C. Title 49:
Section 1 (5) (a) 13, 21
Section 2 ..... 9, 14, 16, 17, 23, 24, 40, 41, 46, 52, 53
Section 3(1) 9, 14, 16, 17, 23, 24, 39, 41, 46, 52, 53, 55
Section 4 (1) 40
Section 13(3) and (4) 5, 8, 10
Section 15 (1) and (7) 14, 15, 18, 25, 26, 29, 30, 35, 54, 56, 57
Section 15a (2) 13, 21, 23, 24

Other Citations.

47 Harv. L. Rev. 494 55

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1946.

No. 467

AYRSHIRE COLLIERIES CORPORATION, a corporation, et al.,
Appellants,

vs.

UNITED STATES OF AMERICA, et al.,
Appellees.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,
Appellant,

vs.

UNITED STATES OF AMERICA, et al.,
Appellees.

Appeals from the United States District Court for the Southern District of Indiana, Indianapolis Division.

BRIEF FOR

The Alton Railroad Company (Henry A. Gardner, Trustee), et al., Railroad Appellees,

and

Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau, Appellees.

Opinions Below.

The specially constituted District Court filed no opinion. Its Findings of Fact, Conclusions of Law, and Judgment appear at R. 108-111. The report of the Interstate Commerce Commission (R. 164-222), *Coal to Beloit, Wis., and Northern Illinois*, appears in 263 I. C. C. 179.

Jurisdiction.

The decree of the District Court was entered on June 5, 1946 (R. 111). The petition for appeal was filed on July 30, 1946 (R. 112-113) and was allowed on August 1, 1946 (R. 119-120). This Court's jurisdiction rests upon the Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 208, 220, 28 U. S. C., sec. 47a), and Section 238 of the Judicial Code as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, 938, par. (4), 28 U. S. C. sec. 345). Probable jurisdiction was noted on October 21, 1946 (R. 1675).

Statutes Involved.

The statutory provisions involved are Sections 1 (5) (a), 2, 3(1), 4(1), 13(3), 13(4), 15(1), 15(7), and 15a(2) of the Interstate Commerce Act (49 U. S. C.), which are set out in the Appendix to this brief.

Statement of the Case.

This is a direct appeal from a final decree of a specially-constituted District Court for the Southern District of Indiana dismissing two complaints seeking to enjoin an order entered by the Interstate Commerce Commission on July 9, 1945, in a proceeding styled Investigation and Suspension Docket No. 5139, *Coal to*

Beloit, Wis., and Northern Illinois, reported in 263 I. C. C. 179. The Commission's order prescribed certain rates and rate relationships on bituminous coal transported by railroad from mines in Indiana and western Kentucky to Beloit, Wisconsin, and certain destinations in northern Illinois. These appellees take the position that the Commission's order is valid and that the decree of the specially-constituted District Court should be affirmed.

A short historical background is necessary to an understanding of the issues in this case. Bituminous coal is mined in great quantities in Illinois, Indiana, and western Kentucky. This great coal field is known as the midwestern field. A natural market for this coal is the territory north and west of the coal field, including the states of Illinois, Iowa, and Wisconsin, and great quantities of coal move to destinations in those states.

Freight rates have, of course, been in effect for many years on coal moving from the mines in this coal field to destinations in the Northwest. Coal rates in the United States have never been based strictly on distance. Competition among coal producers is so keen as to require in the common interest a blanketing or grouping of rates whereby all mines in a particular area or group —often of wide extent—are accorded the same rate when shipping to the same destination. This universal characteristic of coal rate structures obtains with respect to the rates on coal moving from this midwestern coal field to northern Illinois, Iowa, and Wisconsin. The mines in Illinois, Indiana, and western Kentucky have, in other words, long been divided into groups for rate making purposes. These groups are shown on the map which was introduced as Exhibit No. 1 in the proceeding before the Commission (R. 486-A). For convenience, this map has been inserted at the back of this brief.

A necessary concomitant of group rate adjustments is that of rate differentials, or differences in the rates applying from the respective groups in the adjustment. These differentials are usually constructed with reference to a particular base group. The southern Illinois group, the southernmost group in Illinois, has long been the base group as far as the Illinois rate groups are concerned, the rates from all other Illinois groups being made a certain "differential," expressed in cents per ton, under the rates from the southern Illinois group. In recent cases, however, the Commission, in prescribing rates on coal in this general territory, has used the important Fulton-Peoria group in northwestern Illinois as the base group (R. 170). The rates from the western Kentucky group are made a certain "differential" higher than the rates from southern Illinois. In Indiana, Brazil-Clinton, the most northerly group in the State, is the base group, the other Indiana groups being made certain "differentials" over Brazil-Clinton (R. 169).

The rates on coal from these origin rate groups in the midwestern field, with the exception shortly to be mentioned, are, of course, interstate rates and as such are subject to the regulatory power of the Interstate Commerce Commission. However, an important part of this northwest destination territory is that portion lying within the State of Illinois north of the coal fields, including Rockford, Freeport, Dixon, Geneva, and the greatest coal market in the country, Chicago. To these destinations in northern Illinois, the rates from the coal mines in Illinois are for the most part intrastate rates and are subject to regulation by the Illinois Commerce Commission. The existence of this exception to the regulatory jurisdiction of the Interstate Commerce Commission has meant disharmony and maladjustment between the interstate coal rates in this territory and the intrastate rates in Illinois, and has resulted in inter-

mittent litigation concerning these rates before both the Interstate and Illinois Commerce Commissions.

In 1925, reductions were made by the carriers in the rates on coal from the Indiana groups to a number of destinations in northern Illinois, including Rockford, Freeport and Dixon. Since the carriers made no comparable reductions from Illinois groups, the Illinois Commerce Commission, in 1930, required the railroads to make substantial reductions in their intrastate rates on coal from origin groups in Illinois to the same destinations. The carriers thereupon filed a petition with the Interstate Commerce Commission asking that Commission to institute an investigation into the intrastate rates on coal within Illinois, under Section 13 of the Interstate Commerce Act, with a view to entering an order requiring the restoration of the intrastate rates as they were before the Illinois Commerce Commission had required them to be reduced. The Interstate Commerce Commission did institute such an investigation, but in its decision (*Intrastate Rates on Bituminous Coal in Illinois*, 182 I. C. C. 537, decided March 8, 1932) declined to require this particular increase sought by the carriers. The Commission agreed that the intrastate rates to this northern Illinois territory were well below the level of the interstate rates in effect to southern Wisconsin and eastern Iowa, but found that the interstate rates from the Indiana groups to northern Illinois were so low that it would be improper for it to require an increase in the intrastate rates from the Illinois mines unless and until the rates from the Indiana groups to those same northern Illinois destinations were also increased to a level more nearly commensurate with the general level of interstate rates in this territory.

With the failure of the carriers to effect a restoration of the previous intrastate rates to northern Illinois,

attention must be turned to Indiana. One of the lines serving mines in Indiana, the Chicago, Milwaukee, St. Paul and Pacific Railroad, also serves a number of these destinations in northern Illinois where reductions had been required by the Illinois Commission, and that line thereupon, in 1932, filed individual tariffs with the Interstate Commerce Commission proposing to make reductions in its own interstate rates, *i. e.*, applying over its single-line routes, from the two Indiana groups it serves, Brazil-Clinton and Linton-Sullivan, to the northern Illinois destinations it serves, comparable to the reductions which had been made to those destinations in the intrastate rates from Illinois mines. These proposed reductions in the Milwaukee's rates were suspended by the Interstate Commerce Commission and after hearing were ordered canceled. *Coal from Indiana to Illinois*, 197 I. C. C. 245, 200 I. C. C. 609. The Commission's order, however, was held invalid by this Court in *United States* v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, among other reasons because it was not supported by adequate findings of fact. The Court indicated the Commission should "fix the fair relation between one line and another and * * * build the structure of the rates accordingly." (Pp. 509-510.)

Thereupon, in 1934 rates became effective from the Brazil-Clinton and Linton-Sullivan groups in Indiana to some destinations in northern Illinois, which were lower via the single-line routes of the Milwaukee Railroad than via joint-line routes from those groups to those destinations. This is a most important fact in connection with the instant case. In 1936, the Illinois Central Railroad Company met the action of the Milwaukee as far as it could by reducing its single-line rates from the Linton-Sullivan group, the only Indiana group it reaches, to the northern Illinois destinations it serves, to the same basis as ap-

plied via the Milwaukee's single-line routes. Higher rates were therefore left in effect over joint-line routes.

This rate adjustment, under which lower rates obtained over single-line routes of the Milwaukee and of the Illinois Central, from the two Indiana groups mentioned, than over joint-line routes, is usually referred to as the "dual basis of rates." It is around this dual basis of rates that much of the controversy in the instant case revolves.

It is now necessary to explain the immediate cause of the present proceeding before the Interstate Commerce Commission, whose order in this proceeding is here under attack. Suffice it to say that in a formal complaint proceeding, *Fairbanks-Morse & Co.* v. *Alton & S. R.*, 251 I. C. C. 181, decided March 3, 1942, the Interstate Commerce Commission found that the difference between the rates on bituminous coal from these origin groups to Rockford, and the rates to Beloit, was too great, that it unduly preferred Rockford and unduly prejudiced Beloit, and that the spread in the rates, then 30 cents in most instances, should not exceed 15 cents. By its order the Commission gave the carriers the alternative of reducing their rates to Beloit or of increasing their rates to Rockford. The carriers felt that reductions in the rates to Beloit would be apt to spread to other destinations in Wisconsin, and for that and other reasons they concluded to comply with the order in the *Fairbanks-Morse* case by making increases in the rates to Rockford. This action had also the merit, from the carriers' standpoint, of restoring the rates to this "low-spot" destination territory in northern Illinois, to a level more nearly commensurate with the general level of interstate rates in this territory.

Therefore the carriers filed schedules with the Illinois and Interstate Commerce Commissions, proposing increas-

ed rates to Rockford and other destinations in northern Illinois related to Rockford. These schedules were protested by various parties, including the appellant Indiana coal shipping interests (R. 131-141), and were suspended by both commissions.* (R. 141-144, 157-159). The principal railroads operating in Illinois thereupon filed a petition with the Interstate Commerce Commission, alleging that the existing intrastate rates on coal from Illinois mine groups to northern Illinois violated Section 13 of the Interstate Commerce Act, and asking that Commission to institute an investigation into the lawfulness of those rates with a view to entering an order requiring those intrastate rates to be increased (R. 145-159). The Interstate Commission did institute such investigation.** (R. 159-161). The interstate suspension proceeding (I. & S. Docket No. 5139) and the 13th section proceeding (No. 28881) were subsequently heard on a consolidated record with the Illinois Commerce Commission suspension proceeding, under the cooperative plan agreed upon between the two commissions. The testimony taken at the hearings ran to 2857 pages, and 118 exhibits were received, many being extremely voluminous (R. 226-1613, 1675-1700).

In a decision dated July 9, 1945, covering both proceedings, the Interstate Commerce Commission found in No. 28881 that the existing intrastate rates, with certain stated exceptions not here relevant, were so low as to cause unjust discrimination against interstate commerce in violation of the provisions of Section 13 of the Interstate Commerce Act. The Commission indicated in its report the extent to which the intrastate rates should be increased in order to remove the violations of Section 13, but said:

---

* Ill. C. C. Docket No. 30935 and I. C. C. Investigation and Suspension Docket No. 5139.

** I. C. C. Docket No. 28881.

> "In accordance with our practice in section 13 proceedings, we shall leave to respondents and the Illinois commission the matter of adjusting the intrastate rates to conform to our findings and conclusions herein under that section. If this is not accomplished within 60 days from the service of this report, consideration will be given to the entry of an appropriate section 13 order." (R. 212.)

In I. & S. Docket 5139, the Commission issued the order which is attacked in this proceeding (R. 222). In proposing increases in the rates from mines in the midwestern field to destinations in northern Illinois, the carriers did not propose to alter the situation whereby the Milwaukee and Illinois Central would have lower rates over their direct single-line routes from the Brazil and Linton groups in Indiana than via joint line routes from those groups. In other words, the carriers did not propose to do away with the so-called dual basis of rates (R. 177).

In its report, however, after a thorough discussion of the question, the Commission found that the dual basis of rates resulted in unjust discrimination in violation of Section 2 and in undue preference and prejudice in violation of Section 3 of the Interstate Commerce Act (R. 175-184). The Commission then proceeded to a painstaking consideration of the rate relations between the origin groups in Indiana (R. 184-187), and the level of the rates from Indiana with respect to the rates from Illinois (R. 188-192). It found that the present and proposed interstate rates from Indiana groups were unreasonable to the extent they exceeded the rates set forth in the report, and unjustly discriminatory and unduly preferential and prejudicial to the extent they reflected rate relations different from those reflected by the rates prescribed in the report (R. 210-211). The carriers were ordered—

> "* * * (1) to cease and desist from practicing the unjust discrimination under section 2 of the Interstate Commerce Act and the undue prejudice and preference under section 3(1) of said act, found in said report to exist, and (2) to publish, maintain, and apply rates and charges which will avoid and remove the said unjust discrimination and undue prejudice and preference." (R. 222.)

To repeat, it is this order (R. 222) which appellants here seek to enjoin.

The reason that appellants, whose interests lie in Indiana, seek to enjoin this order is primarily because the rates which the Commission prescribed from the Brazil and Linton groups in Indiana are higher in relation to the rates from Illinois groups than were the former single-line rates of the Milwaukee, over which the great preponderance of the coal moved from those Indiana groups. The reason these appellees seek to sustain the Commission's order is primarily because the Commission has now required a revision of this entire rate structure in accordance with the statement of this Court in *United States* v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, and has eliminated the so-called dual basis of rates from the two Indiana groups referred to, to the original establishment of which dual basis of rates appellees were opposed.

Returning now to the Commission's decision in the 13th section case, No. 28881: No order was entered by the Illinois Commission within the 60-day period specified in the Interstate Commission's report, and therefore on November 13, 1945, the Interstate Commerce Commission entered an order in No. 28881 under Section 13 of the Interstate Commerce Act, reading in part as follows:

> "*It is ordered*, That respondents in this proceeding, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, * * * from practicing the unjust

discrimination against interstate commerce found in said report to exist.

"*It is further ordered*, That said respondents, according as they participate in the transportation, be, and they are hereby notified and required to establish, * * * and hereafter to maintain and apply for the intrastate transportation of bituminous coal, in carloads, from Victoria and Rushville, Ill., and from the Fulton-Peoria and Danville groups and other Illinois groups south thereof to northern Illinois destinations to which intrastate rates from the foregoing points or groups are proposed to be increased in schedules enumerated in Appendix E to said report, rates which shall be no lower than the approved rates or on the rate bases as indicated in said report, including appendices A and D thereof; * * *."

Also on November 13, 1945, the Commission entered an order denying the petitions for reopening, reconsideration, rehearing, etc., that had been filed with it by the Coal Trade Association of Indiana and the Milwaukee Railroad, appellants here, and three chambers of commerce, and postponed the effective date of its order of July 9, 1945, in I. & S. Docket No. 5139 to January 21, 1946, making it correspond with the effective date of the order in the 13th section case, No. 28881 (R. 223-224). On December 6, 1945, the effective date of these two orders was further postponed to February 8, 1946 (R. 224-225).

On December 21, 1945, Ayrshire Collieries Corporation, and others, representing coal mining interests in Indiana, filed a petition in the court below seeking to enjoin the Commission's order of July 9, 1945, in I. & S. Docket No. 5139 (R. 1-40). On December 27, 1945, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company filed with the same court a petition seeking similar relief (R. 41-49). These two suits were consolidated by the District Court (R. 54).

The appellees upon whose behalf this brief is filed intervened as defendants in the suits in the District Court (R. 70-76, 87-93). The Commission postponed the effective date of its orders in No. 28881 and I. & S. Docket No. 5139 from time to time until the District Court could be assembled and render a decision (R. 223-225, 1663-1666).

On April 22, 1946, hearing on the applications for a permanent injunction was held before the specially-constituted District Court, at which plaintiffs below introduced certified copies of the record, transcript, briefs and other pleadings in the proceeding before the Interstate Commerce Commission (R. 107).

On June 5, 1946, Circuit Judge Major and District Judge Igoe made their findings of fact and conclusions of law, holding that the Commission's order was supported by substantial evidence, was free from any error of law, and was valid, and entered a decree dismissing the complaints (R. 108-111). Circuit Judge Evans was unable to participate in the decision because of illness (R. 108). Appellants filed no motion questioning the authority of two judges of the three-judge court to render a decree, or seeking the convening of a new three-judge court to rehear the case. On July 23, 1946, rates published to comply with the Commission's orders became effective.

Appeals from the District Court's final decree were duly taken by the petitioners below (R. 112-123). On August 19, 1946, the United States and the Interstate Commerce Commission filed a motion to affirm, to which appellants on September 5, 1946, replied. The appeals were docketed in this Court September 6, 1946, and probable jurisdiction was noted on October 21, 1946 (R. 1675).

SUMMARY OF ARGUMENT.

I.

(Pages 20 to 24)

By the order here under attack the Commission held it was unlawful for the railroads to maintain from mines on the Milwaukee Railroad lower rates via the single-line routes of the Milwaukee than apply from mines in the same group not on the Milwaukee but in which the Milwaukee joins.

The Commission forbade the establishment of this so-called dual basis of rates in 1934, but this Court held the Commission's order invalid in *United States* v. *Chicago, M., St. P. & P. R. R. Co.*, 294 U. S. 499. The dual basis thus thereafter did become effective. *The order of the Commission presently assailed, again finding the dual basis of rates unlawful, is predicated on a complete record and is precisely along the lines which the Court in that case indicated the Commission should have proceeded.* The Court pointed out that "the whole situation is subject to the power of the Commission" in that it "may conduct a comprehensive inquiry into the rates of all the lines within the area of controversy, may fix the fair relation between one line and another, and may build the structure of the rates accordingly." (Pp. 509-10). *This the Commission has now done.*

Appellants, on the other hand, contend the Court's prior decision means that the dual basis of rates is lawful, and they argue from that that the Commission cannot now hold it unlawful. The Commission's 1934 order was based on violations of Sections 1(5) and 15a(2) of the Act, and the Court held the order invalid for lack of sufficient findings and for lack of substantial evidence.

The order presently under attack, however, is based on violations of Sections 2 and 3(1), and is supported both by adequate findings and substantial evidence.

The Court's prior decision attests the validity rather than the invalidity of the order here in issue.

II.

(Pages 24 to 37)

(A) The Commission found that not only the rates under suspension were unlawful under the Interstate Commerce Act, *but also the existing rates*, and proceeded to prescribe for the future rates and relationships differing from the existing as well as from the suspended rates and relationships. Appellants contend the Commission's order is invalid (1) because the Commission lacked jurisdiction to require any change in the existing rates, being limited to passing upon the lawfulness of the rates proposed, and (2) because appellants had no notice that the lawfulness of the present rates was in issue and had no opportunity to be heard on that issue.

These appellees contend on the contrary that Section 15(1) and (7) of the Interstate Commerce Act expressly bestows jurisdiction on the Commission in an investigation and suspension proceeding to prescribe either the maximum or the minimum or the exact rate which shall be established and observed in the future, regardless of whether that rate differs in any wise from the existing rate. This Court has in the past upheld the Commission's issuance of an order on all fours, in this respect, with the order here complained of. A three-judge federal court has expressly held that the Commission has jurisdiction to issue such orders. And the Interstate Commerce Commission has not only often declared it has the power to issue such orders but has in fact issued many of them.

Such being so, the Commission's notice of investigation into the lawfulness of the suspended rates constituted ample notice that the Commission could and might prescribe for the future rates which differed from the suspended rates and which might very well differ also from the rates already existing and in effect. In fact, before the Commission appellants repeatedly stated that the lawfulness of the existing rates was an issue in the case. They should not now be heard to deny that they had notice that prescription of rates different from the existing rates was a possible outcome of the proceeding.

(B) Appellants contend that the Commission's order, insofar as it required a change in the rates to Beloit, Wisconsin, from the Princeton and Boonville groups via the Southern Railway, and from the Brazil-Clinton and Linton-Sullivan groups via the single-line routes of the Milwaukee Railroad, is invalid. They contend that since the tariffs under suspension and investigation proposed no changes in such rates, the Commission lacked jurisdiction to require such rates to be changed.

By its order of investigation, however, the Commission instituted an investigation into the lawfulness of the rates stated in the suspended tariffs. The single-line rates of the Milwaukee Railroad to Beloit were stated in those tariffs, and thus came within the scope of the investigation even though such rates did not represent any change from the existing rates via the Milwaukee's single-line routes. The Commission had jurisdiction under Section 15(1) and (7) to investigate and make the order it did with respect to the Milwaukee's single-line rates to Beloit.

On the other hand, rates via the Southern Railway from the Princeton and Boonville groups to Beloit were not contained in the tariffs under investigation, and ap-

pellants are correct in contending that the Commission therefore had no jurisdiction to require changes in the Southern's existing rates to Beloit. But appellants' argument that the order under attack is consequently invalid is untenable for the simple reason that the Commission did not make any order with respect to those rates.

III.

(Pages 37 to 53).

The Commission found that shippers on the Milwaukee Railroad were unjustly preferred by that railroad's affording them single-line rates lower than the rates accorded other shippers in the same group but not on the Milwaukee, and that the latter shippers were in turn unduly prejudiced and unjustly discriminated against because their rates—which were joint rates and in many of which the Milwaukee joined—were higher than the rates maintained by the Milwaukee for shippers on its line. Further, shippers in other groups were unduly prejudiced by the excessively wide spread between their rates and the low single-line rates accorded by the Milwaukee to shippers on its own line. The Commission found that unjust discrimination in violation of Section 2 and undue preference and prejudice in violation of Section 3(1) existed because of this rate situation.

(A) Appellants contend the Section 2 finding is invalid because, they say, Section 2 only forbids unequal charges to shippers who ship *from the same origin point over the same route* to the same destination, a situation which does not obtain here. That contention is unsound, for when a number of origin points have been gathered together into one rate group for rate making purposes, as is the case here, Section 2 enforces equality as between *all shippers in that rate group.*

(B) Appellants contend the Sections 2 and 3(1) findings are invalid because they are arbitrary and not supported by substantial evidence. They say that the only evidence to support these holdings is "the fact of the measure of such rates and the distances over which such rates applied to various destinations." That is incorrect. As the Commission's report shows, the Commission considered among other things, the total tonnage moving from these origin groups in Indiana to the destinations involved. It observed that the vast preponderance of the traffic was transported under the lower rates of the Milwaukee Railroad. It observed that the transportation conditions obtaining over the single-line routes of the Milwaukee did not differ materially from the conditions obtaining over other routes, and that there was no important difference in the average distances over the various routes. The Commission also observed that all the Indiana mines involved produced about the same quality and grade of coal and that "a difference of a few cents per ton in the transportation charge is normally sufficient to divert a coal contract from one mine to another." The decision of this Court in *United States* v. *Chicago Heights Trucking Co.*, 310 U. S. 344, shows that the evidence on which the Commission acted in this case is sufficient to support its findings of violations of Sections 2 and 3(1). Further, in the proceedings before the Commission, appellants recognized that the record was adequate to support an order adjusting the relationships and level of the rates in issue.

(C) Contrary to appellants' contention, the Commission's order is supported by proper and adequate findings of fact. The thorough and painstaking consideration which is evident from the Commission's report goes far towards refuting appellants' contention that the report and order are arbitrary.

IV.

(Pages 53 to 60).

Appellants contend the Commission's findings and order are invalid because, they say, the Milwaukee Railroad has no effective control over the joint line rates from the Indiana groups. That argument is unsound for three reasons: (A) The order is an order prescribing rates under Section 15 of the Interstate Commerce Act, and since the power to prescribe specific rates is explicitly applicable to cases of undue prejudice, this Court has held that a preferential or prejudicial rate can be eliminated by the Commission's prescribing the specific rates without allowing a carrier any choice of alternatives, and hence without the necessity of a finding that the railroad controls both rates; (B) the order runs against the rates of all railroads participating in the adjustment—not just the rates of the Milwaukee—, and these railroads constitute a group of railroads which effectively control the rates found unlawful and which are the common source of the undue preference and prejudice found to permeate the entire rate structure; (C) the absence or existence of effective participation in and control over these rates is a question of fact entrusted to the Commission which the Commission has determined contrary to appellants' contention; this determination by the Commission should not be impugned by the Court.

V.

(Pages 60 to 72).

Appellants contend that in determining upon the rates and relationships which the Commission prescribed for the future, the Commission was guilty of arbitrary and capricious action. This argument is unsound. The Commission's report shows the painstaking, logical and thor-

ough consideration which went into the prescribing of those rates. The Commission considered, among other things, mileage, transportation conditions, competitive conditions, production figures, volume of movement, the level of the rates, comparative relationships and group differentials. Its order is based on substantial evidence and should be upheld by this Court.

Appellants criticize the order on the alleged ground that the Commission based the prescribed rates to individual destinations only on the basis of the average of the rates to representative destinations, and they criticize the rates and relationships prescribed because they do not, in appellants' opinion, sufficiently reflect the factor of distance. Appellants thus would have the Court substitute its judgment for that of the Commission on intricate questions of rate making, which the Court has consistently held it will not do.

The Commission had jurisdiction to make the order under attack, the order is supported by substantial evidence and adequate findings of fact and is in every respect valid. This Court should affirm the decree of the lower court dismissing the complaints.

ARGUMENT.

I.

By Its Order the Commission Has Done What This Court Has Said It Had the Power to Do and Should Do With Respect to This Very Rate Adjustment.

A portion of this same rate adjustment was before this Court in 1935, in *United States* v. *Chicago, M., St. P. & P. R. R. Co.*, 294 U. S. 499, and in its decision the Court said the Interstate Commerce Commission has the power, and clearly intimated it should exercise the power on a comprehensive record such as it had in the instant proceeding, to enter the very kind of order which it has entered and which is now under attack.

Earlier in this brief, on page 6, there was described how the Milwaukee Railroad, in 1932, filed tariffs reducing its single-line rates from Indiana groups to destinations in northern Illinois substantially below the level of the joint line rates. It will be recalled that the Commission suspended those tariffs and found the proposed reduced rates unlawful, but that this Court, in the case cited above, found the Commission's order invalid. The reduced single-line rates of the Milwaukee subsequently became effective. Such was the origin of the so-called dual basis of rates from Indiana.

Appellants now urge that the Court's opinion in that case has the effect of holding the dual basis of rates to be lawful and therefore forecloses the Commission from entering any order, such as the one now assailed, holding the dual basis unlawful. These appellees, on the other hand, submit that in that opinion the Court indicated clearly that the Commission has the power to enter this kind of order and that it in fact should have done so.

In the prior case the Court had before it a report of the Commission which had found that the reduced rates which the Milwaukee sought to establish (1) "would lead to a disruption of the rate structure on coal in the Indiana and related areas, thus impairing the revenue of the carriers serving those areas and their ability to provide the adequate and efficient transportation service contemplated by section 15a of the act"; (2) would result in different rates from the same group to the same destinations, thus disrupting "the individual groups from which the rates are proposed"; and (3) "would cause a disruption of the long-standing rate relation existing for competitive purposes, between the several Indiana groups." For these reasons the Commission held that the rates proposed would be unreasonable in violation of Sections 1(5) and 15a(2), and ordered them canceled. *Coal from Indiana to Illinois*, 200 I. C. C. 609, 621-2.

As stated, this Court held the Commission's order invalid in *United States* v. *Chicago, M., St. P. & P. R. R. Co.*, 294 U. S. 499. Since there was no finding by the Commission that the rates proposed were less than compensatory or that they were below the zone of reasonableness, the Court concluded that the holding of unreasonableness was based on the disruption which the Commission found would follow from the proposed rates becoming effective. The Court held that this finding of probable disruption, without more, was insufficient to support the holding of unreasonableness, for two reasons. *First*, the mere fact that disruption would follow was "no sufficient reason for prohibiting a change." (P. 507.) There was no indication that it would be "unjust or impracticable" for comparable reductions to be made by other lines, or that if such reduced rates were to be made

by other lines they would be "less than compensatory or that capacity for service to the public will be impaired or put in jeopardy." Reductions would not necessarily mean a diminution of profits, and even if they did result in a diminution of profits that would not by itself warrant prohibition of the change. The Commission's report lacked findings as to the extent of the impairment of revenues, or whether or not it would be substantial, "for only thus can the impairment be related to capacity for service." (P. 508.) The order was therefore invalid because it was not based on sufficient findings. *Second*, the danger of a disruption or breaking down of the rate structure was in fact non-existent and illusory, and the Court held that the holding of unreasonableness on account of that danger was therefore without support. The Court said that it was clearly within the Commission's power to prevent a breaking down of the rate structure:

> "The point of the decision is not that present rates are sound, but that they must be maintained, even if unsound, for fear of a rate war which might spread beyond control. The danger is illusory. The whole situation is subject to the power of the Commission, which may keep the changes within bounds." (P. 509.)

The Court held that the Commission could conduct a comprehensive inquiry into the rates of all the carriers and:

> "may fix the fair relation between one line and another and may build the structure of the rates accordingly." (Pp. 509-510.)

The Court held that the Commission:

> "has not adjudged the fairness of the relation now subsisting between Illinois and Indiana rates, • • • has not questioned its own capacity to prevent unjust reprisals, [and] has put off to an indefinite future the remodeling of the rate structure for all the carriers affected, • • •." (P. 510.)

For this reason, too, the Court held the Commission's order was invalid because there was not substantial evidence to support the finding of a danger of disruption upon which the holding of unreasonableness was based.

Appellants now contend that since the Commission has not found the Milwaukee's rates unreasonable, those rates may not, under this Court's prior decision, be held unlawful. That contention is unsound.[2] The Court said that rates within the zone of reasonableness must be upheld unless they are found to violate some section of the Interstate Commerce Act, and in this case the Commission has found that the rates in question do violate Sections 2 and 3 of that act.

The Court indicated in its prior decision that it might have upheld the Commission's order if the Commission had made definite findings that low single line rates via the Milwaukee Railroad would result in unfair rate relationships, or that such rates "would confirm Milwaukee in the enjoyment of an undue portion of the traffic." 294 U. S., at pp. 510-511. Such findings have now been made by the Commission, and the Court should find the order valid.

This Court has said nothing to require this Commission to forever maintain a hands-off policy with respect to the Milwaukee's rates. What the Court did hold was that the order of the Commission in *Coal from Indiana to Illinois*, 197 I. C. C. 245, 200 I. C. C. 609, where the Commission had found the proposed rates of the Milwaukee unreasonable, was in fact based on the finding that the proposed rates were unreasonable because they would disrupt and break down the existing rate structure with results which would be in the teeth of Section 15a(2). The Court held that the conclusion of unreasonableness (1) was not supported

by adequate findings that the feared disruption would so impair earnings or service as to involve Section 15a (2), and (2) was not supported by substantial evidence that there would be any disruption in the first place.

The findings and conclusions of the Commission in the instant proceeding are quite different from those dealt with by the Court in the case referred to. In fact, the Commission's order, based on findings of violations of Sections 2 and 3 of the act, is the result of what was said by this Court in the prior case. As the Commission observed in its report in the instant proceeding:

> "In *U. S.* v. *Chicago, M. St. P. & P. R. Co., supra,* the Supreme Court pointed out that we had 'not adjudged the fairness of the relation now subsisting between Illinois and Indiana rates;' that 'the whole situation is subject to the power of the Commission,' in that we 'may fix the fair relation between one line and another, and may build the structure of the rates accordingly.'" (R. 184.)

The record being complete, the whole situation is subject to the power of the Comm' sion, and the Commission has, therefore, adjudged the relation between the Illinois and Indiana rates, has fixed the fair relation between those rates and between one line and the other, and has built the structure of the rates accordingly.

II.

The Commission Had Jurisdiction to Enter Its Order.

(A) The Commission had jurisdiction to find the present rates and relationships unlawful and to require them to be changed.

In Conclusion No. 1 of its report, the Commission found that—

> "1. The present and the proposed rates from Indiana to the northern Illinois destinations * * * result or would result in [violation of Sections 2 and 3(1) of the Act]." (R. 210.)

By its order the Commission required that certain rates and relationships be established for the future.*

Appellants contend that the order is unlawful because it purports "to determine the lawfulness of the *present* rates from Indiana to destinations in Illinois, and to require the respondents to publish and maintain rates in the future on a certain basis for the purpose of curing the alleged unlawfulness of the *present* rates, an issue that was not before the Commission in this proceeding." (R. 9; Italics added.)

Appellants are wrong. That in an investigation and suspension proceeding the Commission has the power to find the present as well as the proposed rates unlawful and to require that rates different from either be established, is expressly provided for in the Interstate Commerce Act. This investigation in I. & S. Docket No. 5139 was instituted under the provisions of Section 15 (7) of the act, which, after bestowing the power of suspending schedules filed with the Commission, provides that the Commission may enter upon a hearing concerning the lawfulness of the suspended schedules, and provides further that—

> "After full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission *may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective.*" (Italics added.)

The section of the act stating the kind of an order that the Commission can enter in a proceeding initiated

* The term "present rates," or "existing rates," as used in this brief means the rates which, because the increases the railroads proposed were suspended, continued in effect throughout the pendency of this case before the Commission. The rates and relationships prescribed by the Commission in the proceeding here involved were published and became effective July 23, 1946.

after schedules become effective, is Section 15(1), which reads as follows:

> "Whenever, after full hearing, upon a complaint made as provided in section 13 of this chapter, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any * * * rate, * * * is or will be unjust or unreasonable *or unjustly discriminatory or unduly preferential or prejudicial*, or otherwise in violation of any of the provisions of this chapter, the Commission is hereby authorized and empowered *to determine and prescribe what will be the just and reasonable* * * * *rate* * * * *to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged*, * * * *and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist*, and shall not thereafter publish, demand, or collect any rate * * * for such transportation other than the rate * * * so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, * * *." (Italics added.)

Under these statutory provisions, the Commission could have let the proposed rates go into effect instead of suspending them, and could then, after the investigation and hearing, have proceeded to enter an order requiring the establishment of the very rates which it did in fact require in the order here attacked. In short, it is clear that the Commission acted within the scope of its power and jurisdiction in finding that the *present and proposed* rates result in unjust discrimination and undue preference and prejudice, and in requiring a changed relation between the rates although the suspended schedules do not propose a change in such relation.

In *Western Paper Makers' Chemical Co.* v. *United States*, 271 U. S. 268, this Court upheld an order of the Interstate Commerce Commission which, just like the order in the case at bar, found unlawful not only the rates under suspension but also the rates already in effect, and prescribed a new basis of rates for the future. That decision should be followed here.

Other court and Commission cases confirin the conclusion that the Commission here had authority to find the *present* rates unlawful and to prescribe rates for the future different from either the present or suspended rates. In *Akron, C. & Y. Ry. Co.* v. *United States*, 22 F. (2d) 199, a three-judge district court said (p. 203):

> "Section 15, par. 7, empowered the Commission to entertain proceeding No. 2440. After a full hearing, the Commission may make such order with reference to the proposed new rate as would be proper in a proceeding initiated after it had become effective. It was within the power of the Commission, if it found the rate attacked to be unreasonable, under section 15, par. 1, to require a reduction of that rate to a basis found to be reasonable. *Advances in Rates, Western Case*, 20 *Interst. Com. Com'n R.* 307. *It has power either to increase or decrease the then existing rates. Western Paper Makers' Chemical Co.* v. *U. S.*, 271 U. S. 268, 46 S. Ct. 500, 70 L. Ed. 941; *Mo. Pac. R. Co.* v. *Boone*, 270 U. S. 469, 46 S. Ct. 341, 70 L. Ed. 688; *Excelsior from St. Paul*, 36 Interst. Com. Com'n R. 349; *Naval Stores from Southern Points*, 87 Interst. Com. Com'n R. 740." (Italics added.)

In *Advances in Rates—Western Case*, 20 I. C. C. 307, 314, the Commission said:

> "The question before the Commission is that which would have arisen *had these rates gone into effect and a formal complaint been made against them as unjust and unreasonable.* We may establish the rates pro-

posed as reasonable, one or all of them, or reduce the proposed rates. We may continue in effect the present lower rates, *or we may reduce the existing rates.* For 'the Commission may make such order in reference to such rate * * * as would be proper in a proceeding initiated after the rate had become effective.'" (Italics added.)

In *Lignite Coal from North Dakota,* 126 I. C. C. 243, 244-5, the Commission said:

"Respecting the jurisdictional question, the position is taken that, in an investigation and suspension proceeding, the only issue before us is as to the lawfulness of the *suspended* schedules; that we are called upon either to condemn or approve the schedules; that we have no authority to approve a basis intermediate between the existing rates and the basis sought to be made effective; and that as the proposed schedules were not approved, *the finding that the present rates were too low was consequently 'irrelevant,' 'gratuitous,' and 'not binding on anyone.' But this view is wholly untenable and in conflict with specific provisions of the act and numerous decisions of the commission.* See *Advances in Rates—Western case,* 20 I. C. C. 307, at page 314; *Excelsior from St. Paul, Minn.,* 36 I. C. C. 349, at page 365; *Salt from Louisiana Mines to Chicago,* 69 I. C. C. 312, at page 313. Referring to paragraph (7) of section 15 of the act, it was stated in the case last referred to:

> 'By this provision we are given authority to determine the "lawfulness" of a "new" rate, whether it be increased or decreased. The duty of specifying in what respect and to what extent the new rate will be lawful or unlawful is not laid upon us, although we "may" make any order which would be proper in a proceeding pending upon complaint.'" (Italics added.)

In *Sioux City Term. Ry. Switching,* 241 I. C. C. 53, 73-4, the Commission said:

"On brief, complainants question our authority to deal with this situation in these proceedings. In an investigation and suspension proceeding we constantly take cognizance of violations of sections 1, 2, and 3 of the act, and there being placed before us the question of what rates, rules, regulations, or practices are lawful for the future, *we may require changes in the existing rates,* rules, regulations, and practices (*Lignite Coal from North Dakota,* 89 I. C. C. 726); and we have authority to make such order with reference to the matters under investigation as would be proper in a proceeding initiated after the proposed schedules go into effect (section 15 (7))." (Italics added.)

In short, the specific provisions of Section 15(1) and (7) of the Interstate Commerce Act, as interpreted for many years by this Court, other federal courts, and the Interstate Commerce Commission as well, support the proposition that the Commission here had authority to find that the present as well as the suspended rates were unlawful.

Appellants also contend that they had no notice that the lawfulness of the present rates was in issue and had no opportunity to be heard on such issue. This contention is untenable. The Commission's order of investigation of July 30, 1942, in I. & S. Docket No. 5139, instituting the proceeding, reads in part as follows:

"*It is ordered,* That the Commission • • • enter upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in the said schedules contained in said tariffs, viz.:

• • • •

And the rates, charges, regulations and practices stated in all schedules contained in each of the other said tariffs and supplements named in this order." (R. 142-144.)

That order—in view of the explicit provisions of Section 15(1) and (7) of the Interstate Commerce Act, the holdings of this Court, lower federal courts, and the Commission, especially the not uncommon practice of the Commission in cases of this kind to find both proposed and existing rates unlawful,—constituted notice to all parties, including the appellants, that the issue in the case was the lawfulness of the rates contained in the tariffs being investigated, and constituted notice likewise that the Commission could prescribe for the future rates which differed from those proposed regardless of whether the rates so prescribed were the same as or different from the rates already existing and in effect. At least one witness expressly stated that the Commission might decide "that the rates should be the same from all mines in the Brazil-Clinton, Indiana group via all routes and the same from all mines in the Linton-Sullivan, Indiana group via all routes." (R. 1557.)

In considering appellants' contention, this Court should also note that before the Commission these appellants *alleged and contended that the present rates were in issue and were in fact unlawful.* The following excerpt from the record before the Commission states the position of the Indiana coal producers who are members of the Coal Trade Association of Indiana, one of the appellants here, as testified to on direct examination by their witness, Mr. Harold V. Scott (R. 1060):

> "Q. [By Mr. Wilkinson]. What is the position of the Indiana operators with respect to the proceeding in issue?
>
> "A. • • • Our position with respect to Beloit and affected intermediate points, is that *the present rates* on bituminous coal from the Indiana mines are not less than reasonable maximum rates, but *are relatively unreasonable and excessive* • • • *in violation of Section 1 of the Act.* • • • Our position with re-

spect to the rates to destinations in Northern Illinois is that *the present rates* on bituminous coal from Indiana mines are not less than reasonable maximum rates but *are unreasonable and excessive;* * * *. Furthermore, *the present* and proposed rates to these Northern Illinois destinations *subject the producers and shippers of coal from Indiana mines to an undue prejudice and accord the producers and shippers of coal from Illinois mines,* who ship in interstate and intrastate commerce within the state of Illinois, *an undue preference in violation of Sections 3 and 13 of the Act, and subject some producers and shippers of Indiana coal to an undue prejudice and accord other producers and shippers of Indiana coal an undue preference, in violation of section 3 of the Act.*" (Italics added.)

This testimony shows that throughout the proceedings before the Commission the appellants took the position that the *present* rates were in issue. Witness Scott and his counsel stated that the "testimony and exhibits" that they had presented were "intended to prove * * * that the rates and differentials *as now in effect* and as proposed to the Northern Illinois destinations and as now proposed to Beloit, are not proper." (R. 1118. Italics added.) That is made clear also by the following testimony of witness Scott on cross examination (R. 1150-1151):

> "Q. (By Mr. Zoll) Mr. Scott, as I understand your testimony, you are of the opinion that *the present rates* from Indiana to these Northern Illinois destinations are unreasonable, in violation of Section 1, is that correct?
>
> "A. The present rates are unreasonable in violation of Section 1? *Yes.* Our contention is that probably the strongest—our principal contention is that they are relatively unreasonable with relation to the rates from the Illinois fields.

"Q. In relation to the present rates from Illinois?
"A. Both present and as proposed.
"Q. Then the answer to my question is yes?
"A. *Yes.* I modified it just a little.

• • •

"Q. I understood you to say that *the present rates* from Indiana were unreasonable.
"A. *Yes.*" (Italics added.)

Appellants not only recognized throughout the Commission proceeding that the present rates were in issue, but they also recognized that a full hearing was afforded on that issue. The following is taken from the Exceptions filed by the Coal Trade Association of Indiana to the Examiner's proposed report, dated July 15, 1944, included in the record on appeal:

> "In these proceedings, *under the issues involved in the Investigation and Suspension case* and the 13th Section case, *the present record is sufficient* for the Commission to determine the propriety of the level of the rates from the mines in Illinois and Indiana to these destinations in northern Illinois and Beloit, and the differentials to apply as between the mine origin groups in said States in the movement of coal to such destinations." (Page 17, Italics added.)
>
> "*There is no evidence omitted from this record which is necessary for a decision of these issues.* • • • We urge that the Commission exercise the jurisdiction conferred on it by the Act, and enter an order based on the facts, • • • and that there be no further postponement in making effective within this territory a rate adjustment that is fair and reasonable to all concerned, a rate adjustment that protects the interests of the consumer as well as the producers of coal in this territory." (Pages 111-112, Italics added.)

In showing this court that appellants have all along recognized what no one questioned, *i. e.*, that in this proceeding the lawfulness of the present rates was in issue,

these appellees are confronted with a veritable *embarras de richesses*. See, for example, the original brief of the Coal Trade Association of Indiana before the Commission, dated January 31, 1944, pages 26, 31, 35-6, 37-8, 43, 46, 52, 53, 62, 66, 85, 90, 104, 105. Many other similar references are to be found in the Exceptions and Petition for Reconsideration filed by the same party. Note particularly the following from the Exceptions:

> "This evidence is adequate and compelling to require a correction in the *present* situation, * * *." (Page 116. Italics theirs.)

And this:

> "We further submit that under the issues in I. & S. Docket No. 5139 and Docket No. 28881, the Commission has jurisdiction to enter orders finally disposing of the matter of the proper rates and relationships between the various Illinois groups and the Indiana groups to this destination territory, * * *." (Page 122.)

In conclusion, it is perfectly clear that the present rates were in issue before the Commission, that ample notice was given, that a full hearing was held, and that the Commission had jurisdiction to require that rates different from the present rates be established for the future.

(B) The Commission did not overstep its jurisdiction in dealing with the rates to Beloit via the Southern Railway from Princeton and Boonville and via the single-line routes of the Milwaukee Railroad from Brazil-Clinton and Linton-Sullivan.

Appellants contend that inasmuch as no change was proposed in the suspended schedules in the rates to Beloit, Wisconsin, via the Southern Railway from the Princeton and Boonville groups and via the single-line routes of the Milwaukee Railroad from the Brazil-Clinton

and Linton-Sullivan groups, the Commission had no power to require those rates to be changed. This contention is untenable.

Attention will first be directed to the rates of the Milwaukee Railroad from Brazil-Clinton and Linton-Sullivan to Beloit. From each of those two Indiana groups the present rates to Beloit were the same via all routes. That is, from Brazil-Clinton to Beloit the present rate was $2.10 via all routes, and from Linton-Sullivan to Beloit the present rate was $2.20 via all routes. By the schedules under suspension the carriers proposed to increase the rates from Brazil-Clinton to Beloit from $2.10 to $2.27 via all routes except via the single-line route of the Milwaukee Railroad. The Milwaukee proposed to keep the $2.10 rate for application over its single-line route. Similarly, the carriers proposed to increase the $2.20 rate from Linton-Sullivan to Beloit to $2.32 via all routes except the single-line route of the Milwaukee, which line proposed to retain the existing $2.20 rate for application over its single-line route.

The Commission's order of investigation of July 30, 1942, in I. & S. Docket No. 5139 reads in part as follows:

> "*It appearing*, That there have been filed with the Interstate Commerce Commission tariffs containing schedules * * * designated as follows:
>
> * * *
>
> Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings, George I. Haight, Trustees);
>
> Supplement No. 9 to I. C. C. No. B-7238
>
> Supplements Nos. 27 and 28 to I. C. C. No. B-7246
>
> Supplement No. 25 to I. C. C. No. B-7287;
>
> * * *
>
> "*It is ordered*, That the Commission * * * enter upon a hearing concerning the lawfulness of the rates,

charges, regulations and practices stated in the said schedules contained in said tariffs, viz.:

* * *

And the rates, charges, regulations and practices stated in all schedules contained in each of the other said tariffs and supplements named in this order." (R. 141-144.)

In short, the investigation in I. & S. Docket No. 5139 was into the lawfulness *of all rates contained in the tariffs named in the order.* It will be noted that among the Milwaukee tariffs specifically named is Supplement No. 27 to I. C. C. No. B-7246. Item 371 of that supplement states that the rate from Brazil-Clinton to Beloit, via the single-line route of the Milwaukee Railroad shall be $2.10, and that the rate from Linton-Sullivan to Beloit via the single-line route of the Milwaukee Railroad shall be $2.20 (R. 1646). In other words, the tariff under investigation contains the very rates of the Milwaukee Railroad which appellants say the Commission had no power here to change.

The Commission's order of investigation stated that the investigation was into the lawfulness of *all* rates contained in the suspended tariffs, and the hearings and evidence pertained to *all* such rates, and covered the single-line rates of the Milwaukee Railroad to Beloit.

Consideration of Section 15(1) and (7) of the Interstate Commerce Act will show that the Commission had the power to institute an investigation into the lawfulness of the rates shown in the Milwaukee tariff above referred to and upon evidence of unlawfulness to require a change in those rates. The point is well elucidated in the Commission's decision in *Coal Rates from Oak Hills, Colo.*, 30 I. C. C. 505, 508:

"Under section 15, paragraph 1, of the act, the Commission, on its own initiative, whenever it is of the opinion that any rates demanded, charged, or

collected are in any way unlawful, may enter upon an investigation, hold full hearings, and determine and prescribe just and reasonable rates. Where new rates are filed, the Commission, under section 15, paragraph 2 [now paragraph 7], is authorized by similar means to determine the propriety of such new rates and, pending such determination, to suspend the operation of the schedules stating such new rates. In connection with the latter hearing the statute casts upon the carrier the burden of justifying any increased rates.

"As has already been observed, the proposed rates include some increases over and some decreases under the present rates, *while in other cases the proposed rates are the same as the present.* The order herein shows plainly the intent of the Commission to enter upon a hearing concerning the propriety of the increases and the lawfulness of the rates under suspension, and provides that the operation of *all* schedules contained in the proposed tariff be suspended. Clearly, when the proposed rates involve increases or decreases they are new rates, and as to them the Commission's jurisdiction in this proceeding is full and complete by virtue of the second [now seventh] paragraph of section 15. *If the rates in which no change is proposed be not new rates, then they are necessarily rates 'demanded, charged, or collected,' and their investigation in this proceeding is proper under the first paragraph of section* 15. And certainly there can be no doubt under the second [seventh] paragraph of the Commission's power to suspend in its entirety the schedule stating these rates." (Italics added.)

It is clear that insofar as concerns the rates over the single-line routes of the Milwaukee Railroad from Brazil-Clinton and Linton-Sullivan to Beloit, the Commission had jurisdiction to enter the order of July 9, 1945, requiring those rates to be changed.

Turning now to the rates of the Southern Railway from Princeton and Boonville to Beloit. Here the situ-

ation is different from that of the Milwaukee's rates just discussed. The Southern Railway tariff included in the Commission's order of investigation dated July 30, 1942, does not contain any rates from Princeton or Boonville to Beloit (R. 1658-1661) and for that reason *the Commission made no findings or order with respect to those rates.*

This is evident from Conclusion No. 2 in the Commission's report, which contains the Commission's findings with respect to the rates to Beloit (R. 210-211). That conclusion relates only to "The proposed rates from the Brazil, Linton, and Princeton districts in Indiana to Beloit, as published in tariffs named in appendix E * * * ." Since the tariffs named in appendix E do not contain rates of the Southern Railway to Beloit (R. 221, 1658-1661), it is clear that the Commission has made no findings or order with respect to those rates. This is corroborated by the omission of Boonville from the Indiana groups named in Conclusion No. 2 (R. 210-211).

Appellants' contention that the order was therefore beyond the issues in the proceeding, is without merit.

III.

The Commission's Conclusions That the Present and Proposed Rates From Indiana Are Unlawful in Violation of Sections 2 and 3 of the Act Are Supported By Substantial Evidence and By Adequate Findings.

On page 6 of this brief it was explained how it came about that the present single-line rates of the Milwaukee Railroad from the Brazil-Clinton and Linton-Sullivan groups in Indiana to destinations in northern Illinois were lower than the joint-line rates—in which joint line basis the Milwaukee joins (R. 181)—from the same groups to the same destinations. In their

proposed schedules, which were suspended in I. & S. Docket No. 5139, the carriers did not propose to correct that situation. The same increases were proposed in the joint-line rates as in the single-line rates to northern Illinois destinations, thus continuing the Milwaukee's single-line rates on a basis lower than the joint-line rates. The same can be said for the single-line rates of the Illinois Central from Linton-Sullivan which the carriers proposed to continue on a basis lower than the joint-line rates from that group. In fact, it was proposed to extend the dual basis to the Princeton group and to Beloit (R. 179).

In its report the Commission held that this so-called dual basis or multiple basis of rates resulted and would continue to result in unjust discrimination and undue preference and prejudice. The Commission proceeded to prescribe one basis of rates from those groups, to apply over single-line as well as joint-line routes, which is *lower* than what the carriers proposed over joint-line routes but *higher* than what was proposed over the Milwaukee's and Illinois Central's single-line routes. This holding is reflected in Conclusion No. 1 to the Commission's report (R. 210). A somewhat similar holding was made in Conclusion No. 2, with respect to the proposed rates to Beloit (R. 210-211).

It is these two Conclusions, containing the Commission's holdings of unjust discrimination and undue preference and prejudice, which appellants attack as being unsupported by adequate findings or substantial evidence. To pass on this contention, it is necessary to analyze the above Conclusions somewhat more closely. Conclusion No. 1 can be taken as representative.

In Conclusion No. 1 the Commission concluded that the dual basis of rates (*i. e.*, lower rates over the Milwaukee's single-line routes than over joint-line routes),

"would result in *unjust discrimination* as between shippers and receivers of coal transported in whole or in part by the Milwaukee or the Illinois Central railroads, in violation of section 2 of the act." (R. 210.) That is, for example, a shipper or receiver of coal transported from a mine on the C. & E. I. in the Brazil-Clinton group, originating on the C. & E. I., interchanged with the Milwaukee and delivered by the Milwaukee at destination, would pay a higher rate than a shipper or receiver of coal transported from a mine on the Milwaukee in that same group and transported to the same destination by the Milwaukee alone.

In Conclusion No. 1 the Commission also concluded that the present and proposed rates would result in *undue preference and prejudice* in violation of Section 3 of the Act (R. 210). The Commission held (1) that the present rates as well as rates which the carriers proposed would result in undue preference and prejudice *as between the origins in the Brazil and Linton groups.* That is, an origin on the Milwaukee in the Brazil group would be preferred in that it would have a low single-line rate of the Milwaukee available to it to certain destinations, and an origin on the C. & E. I. in the same group would not have such low rate available to it. And the Commission held also (2) that the present and proposed rates would also result in undue preference and prejudice *as between the Indiana districts and the points in each of such districts.* That is, for example, an origin on the Milwaukee in the Brazil district would be preferred and an origin in the Princeton group would be prejudiced in that the former would have available a single-line rate via the Milwaukee to some destinations which would be further below the rate from the Princeton origin than the Commission concluded was necessary to avoid undue prejudice to the Princeton origin. (See R. 182.)

(A)

Appellants first say that Section 2 is not applicable to this situation, that Section 2 covers only the situation where there are unequal charges to shippers who ship *from the same origin point over the same route* to the same destination. This contention is unsound. Section 2 contains no such requirement. Cases cited by appellants Ayrshire Collieries Corporation, et al., including *United States* v. *Chicago Heights Trucking Company*, 310 U. S. 344, do not support appellants' contention.

Section 2 forbids different charges for "a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions." Unlike Section 4 of the Act, Section 2 does *not* require transportation "over the same line or route." Section 2 has been construed as requiring equality of rates between shippers in the same switching district or the same community (*Richmond Chamber of Commerce* v. *S. A. L. Ry.*, 44 I. C.C. 455, 464; *Boger & Crawford* v. *Seaboard Air Line Ry. Co.*, 157 I. C. C. 227), and when a number of origin points have been gathered together into one rate group for rate making purposes, as is the case here, then Section 2 has been construed as enforcing equality as between all shippers in that rate group. *Pennsylvania R. Co.* v. *International Coal Mining Co.*, 173 Fed. 1 (reversed on other grounds in 230 U. S. 184); *Langdon* v. *Pennsylvania R. Co.*, 194 Fed. 486 (reversed on other grounds in 208 Fed. 145). As this Court held in *United States* v. *Chicago Heights Trucking Co.*, 310 U. S. 344, "The Interstate Commerce Act does not attempt to define an unlawful discrimination with mathematical precision. Instead, different treatment for [substantially] *similar* transportation services is made an unlawful discrimination when 'undue,' 'unjust,' 'unfair,' and 'unreasonable.'" (P. 352. Italics added.)

(B)

Turning next to the question whether the Commission's findings of violations of Sections 2 and 3 are supported by substantial evidence, appellants say that the only evidence to support the Commission's holdings of unjust discrimination and undue preference and prejudice was "the fact of the measure of such rates and the distances over which such rates applied to various destinations." (R. 11.) This is clearly wrong. Merely a reading of the Commission's report shows that the findings of unjust discrimination and undue preference and prejudice are supported by considerably more evidence than that of just rates and distances.

In considering the lawfulness of the rates, the Commission first considered the total tonnage moving from Brazil and Linton to representative northern Illinois destinations. This evidence was contained in Exhibit 4, Section VIII, introduced by the carriers (R. 1677). In its report the Commission adverts to this evidence, and observes that the Milwaukee, which maintained a low single-line basis of rates from Brazil and Linton, transported the great bulk of the tonnage from those groups although there were only a relatively few mines on its lines in those groups (R. 180, 182-183):

> "Four of the 30 origin points in the Brazil group and about 9 of the 31 origins in the Linton group on coal to this destination territory are served by the Milwaukee. * * * In a recent period said to be representative, but not detailed of record, of the total Brazil and Linton tonnage moved to Rockford, the Milwaukee transported under its single-line rates 95.4 percent from the Brazil group and 78.5 percent from the Linton group. There was some movement from the other mines in each of the groups, but apparently it was relatively small. Nevertheless, the only justification offered by the Milwaukee for

> insisting on lower rates than those of the other carriers, except the Illinois Central from the Linton group, is its fear that there would be relatively little movement from mines served by it if its rates were made the same as those from the mines on the competing carriers to the same destinations."

Passing from a consideration of the tonnage transported under the rates, the Commission considered the relative operating conditions, concluding (R. 183):

> "The transportation conditions over the single-line routes of the Milwaukee and the Illinois Central do not differ materially from those over the joint-line routes to the same destinations from other mines in the same group, in many of which latter routes, as stated, the Milwaukee and the Illinois Central participate. There is no important difference in the average distances over those respective routes."

Appellants contend, however, that there was no evidence as to the similarity of operating conditions over the Milwaukee's single-line routes and other routes from mines in the same groups (R. 11). Their allegation is incorrect. The record before the Commission contains the testimony of Mr. W. J. Whalen, Superintendent of the Milwaukee Railroad, who described the handling of coal and the operating conditions encountered via the Milwaukee's single-line routes from Brazil and Linton to destinations in northern Illinois and to Beloit (R. 778-802). The record also contains the testimony and exhibits of Mr. C. H. Fischer, Superintendent of Transportation of the Chicago & Eastern Illinois Railroad Company, with respect to that company's handling of coal from mines in Brazil and Linton served by it, and the operating conditions encountered by it (R. 802-807, 1683-1684). Appellants Ayrshire Collieries Corporation, et al., purport in their brief to summarize all this evidence.

While they disclaim any intention to do so, they are nevertheless simply arguing the weight of the evidence, which is improper before this Court. The record contains substantial evidence on operating conditions (R. 732-778, 802-824, 1683-1684). In that evidence the Commission had a great deal to support its finding that transportation conditions and distances over the Milwaukee's single-line routes were substantially similar to those obtaining over joint-line routes.

The position which appellants are taking on this point of transportation conditions before this Court is exactly the opposite of the position they took before the Commission. In the Coal Trade Association of Indiana's Reply to Exceptions to the Examiner's Proposed Report, dated September 8, 1944, included in the record on appeal, it was contended—

> "However, the evidence shows that *the operating conditions are similar as between the principal carriers serving Illinois and Indiana within Illinois and from Indiana to Illinois* and also to the destinations in Iowa and southern Wisconsin." (Page 24. Italics added.)

Further on in the same brief it is said—

> "The evidence respecting the C & E I, which serves both States, is shown on Exhibits Nos. 18 and 19, and shows that *the tonnage ratings, grades and curves are substantially similar in both States.* That evidence, coupled with the fact that the Indiana mines are within a 'stone's throw' of the mines in Illinois and are *in a territory of the same general topographical features*, a fact of which the Commission can take judicial knowledge, is sufficient to establish *the similarity of the operating conditions in the transportation of coal from the two States to these destinations in northern Illinois* especially when it is coupled with the fact that over a *sub-*

stantial portion of the haul the coal from Illinois and Indiana is handled by the C M St P & P and the C & N W and moves from the interchange points in the same trains over the same tracks to the same destinations." (Pages 24-25. Italics added.)

The contention was again clearly stated as follows—

"We submit that this record clearly establishes that *the service of originating coal in Illinois and Indiana and transporting it to the destinations here involved is a service performed under substantially similar operating conditions from both States, irrespective of the fact that only five railroads offered evidence as to their operations.* They are illustrative of the general conditions that exist in the two States, and the general conditions that exist from those two States to Wisconsin and Iowa destinations." (Pages 25-6. Italics added.)

Witness Scott, testifying for the Coal Trade Association of Indiana, said:

"I have testified in this proceeding that to my knowledge transportation conditions were similar from Indiana mines and from Illinois mines." (R. 1209. See also R. 1239.)

Appellants were right when they contended before the Commission that "the operating conditions are similar as between the principal carriers serving Illinois and Indiana" and when they contended there was substantial evidence in the record to sustain such a finding by the Commission. They are wrong when they contend the contrary before this Court. See also page 51, *infra*.

To return to the Commission's report: Having considered the facts that although operating conditions over the Milwaukee's single-line routes were substantially the same as over joint-line routes, the Milwaukee was maintaining lower rates over its single-line routes and was thus getting the great preponderance of the tonnage,

with mines on other lines shipping but little, the Commission stated (R. 183):

> "Normally, coal sales turn on a price difference of as little as a few cents a ton."

The Commission also stated the matter thus (R. 206):

> "In general, all of the mines in these districts produce coal of the same quality and grade, and a difference of a few cents per ton in the transportation charge is normally sufficient to divert a coal contract from one mine to another."

This last conclusion or observation is conceded by appellants to be accurate, for they say (R. 33):

> "The Commission has recognized that a few cents per ton in delivered costs, which includes the freight rate, controls the purchase of coal."

See also R. 35. Appellants, however, say that there was no evidence to support the statement that in general the mines in these Indiana groups produce coal of the same quality and grade. This is incorrect. The witness for the Coal Trade Association of Indiana itself, one of the present appellants, testified (R. 1145):

> "The coal produced in the four groups in Indiana for the most part, in general—I am not going into detail—in general is similar. They must compete with each other for the markets."

This was later amplified (R. 1181-1182):

> "Q. • • • What do you mean by 'substantially similar'?
>
> "A. Oh, the coal, the different veins of coal produced in the different districts of Indiana are somewhat similar, and the quality of the coal itself is generally similar."

Cf. also R. 1187. As indicating the irrelevancy of appellants' contention, it should be noted that in the words of the Commission—

> "It is also true that coal rates are not, and as a practical matter may not be, made to depend upon the quality of the coal to which the rates are applied." *Rates on Coal from Missouri*, 159 I. C. C. 617, 627. See also *Coal Trade Association of Indiana* v. *Algers, W. & W. Ry. Co.*, 232 I. C. C. 356, 361.

In short, there is substantial evidence for the Commission's statement that "In general, all of the mines in these [Indiana] districts produce coal of the same quality and grade." (R. 206.) Even if the statement were unsupported by the evidence and were in fact untrue, and the coal produced by mines on the Milwaukee were of a poorer grade and quality than that produced elsewhere in Indiana, that difference in quality and grade would nevertheless not justify a lower basis of rates via the single-line routes of the Milwaukee Railroad.

Following these recitals of the evidence, the Commission said (R. 183):

> "Plainly, therefore, only by the establishment and maintenance of a single rate basis from each of these coal-rate districts can unjust discrimination and undue prejudice be avoided."

The report shows that the Commission gave specific thought to the question whether it was justified on the basis of the evidence of record to make findings under Sections 2 and 3(1), for the Commission said (R. 183):

> "Under the circumstances recited, an extensive showing of injury through the loss of tonnage to particular coal shippers or consumers by reason of the discriminatory rates here before us is not required. *United States* v. *Trucking Co.*, 310 U. S. 344."

The case cited (*United States* v. *Chicago Heights Trucking Co.*, 310 U. S. 344) furnishes a direct answer to a good many of the arguments here advanced by the appellants. For example, appellants say that no one con-

tended the rates were unjustly discriminatory or unduly prejudicial (R. 12-13); that there was no evidence that any particular person or company or consumer was or would be subjected to unjust discrimination or undue preference or prejudice (R. 11-12, 17); and that there was no evidence that any particular mine in Indiana would have shipped more coal in the absence of lower rates from mines on the Milwaukee (R. 12, 17). Appellants also argue that *findings* as to each of these matters are necessary. These arguments are all answered by the decision of this Court in the *Chicago Heights Trucking Company case, supra.*

In that case this Court upheld an order of the Commission where the Commission had found that certain rail rates "were unlawfully discriminatory in affording lower rates to 'forwarders' of freight than to other shippers." (310 U. S. 344, 345.) Like in the case at bar, it was there contended that the evidence of record did not support the Commission's conclusion and the evidence which was there said to be lacking is the very evidence which appellants here say is indispensable. The Court put it this way (pp. 350-1):

> "Respondents contend that the Commission improperly concluded that the canceled tariffs create undue preferences or advantages resulting in unjust discriminations in violation of 216 (d) *because there was no evidence that the suspended rates would subject any particular person or type of traffic to disadvantage or injury;* • • •: [because] *the only evidence before the Commission was introduced by respondents; and* [because] *no shippers complained of injury.*" (Italics added.)

The Court, however, rejected these contentions—the very same ones that the appellants are making here—, saying (pp. 353-4):

"The fact that the Commission acted on its motion without complaints by individual shippers did not detract from the Commission's power to protect and maintain a transportation system free from partiality to particular shippers. The Commission acted in its capacity as a public agency and carried out duties imposed upon it by Congress in the interest of shippers generally, the national transportation system and the public interest. Its order was the embodiment of the Commission's judgment that the proposed tariff was a discrimination prohibited by the Act. 'The judgment so exercised, being supported by ample evidence, is conclusive.' "

The Court also said (pp. 352-3):

"'It is not disputable that from the beginning the very purpose for which the Commission was created was to bring into existence a body which from its peculiar character would be most fitted to primarily decide whether from facts, disputed or undisputed, in a given case preference or discrimination existed.' [*United States* v. *Louisville & Nashville R. Co.*, 235 U. S. 314, 320.] And where a court substituted 'its judgment as to the existence of preference for that of the Commission on the ground that where there was no dispute as to the facts it had a right to do so, [the court] obviously exerted an authority not conferred upon it by the statute.' [*Supra.*] So here, it has been pointed out that there was no dispute in the evidence before the Commission, all of which was introduced by respondents. But the differing inferences as to discrimination finding possible support in that evidence are made to stand out by the persuasive reasoning advanced in both the majority and minority opinions of the Commission. The Interstate Commerce Act does not attempt to define an unlawful discrimination with mathematical precision. Instead, different treatment for similar transportation services is made an unlawful discrimination when 'undue,' 'unjust,' 'unfair,' and 'unreasonable.' *And the courts have always recognized that Con-*

gress intended to commit to the Commission the determination, by application of an informed judgment to existing facts, of the existence of forbidden preferences, advantages and discrimination." (Italics added.)

In *Swayne & Hoyt, Ltd.* v. *U. S.*, 300 U. S. 297, 304, this Court said:

> "Even though, upon a consideration of all the evidence, a court might reach a different conclusion, it is not authorized to substitute its own for the administrative judgment. See *Manufacturers R. Co.* v. *United States*, 246 U. S. 457, 481; *Pennsylvania Co.* v. *United States*, 236 U. S. 351; cf. *United States Navigation Co.* v. *Cunard S. S. Co., supra*, 484. Whether a discrimination in rates or services of a carrier is undue or unreasonable has always been regarded as peculiarly a question committed to the judgment of the administrative body, based upon an appreciation of all the facts and circumstances affecting the traffic. *Manufacturers Ry. Co.* v. *United States, supra; Pennsylvania Co.* v. *United States, supra*, 361; *Seaboard Air Line Ry Co.* v. *United States*, 254 U. S. 57, 62; *Pennsylvania R. Co.* v. *International Coal Co.*, 230 U. S. 184, 196; *Nashville, C. & St. L. Ry.* v. *Tennessee*, 262 U. S. 318, 322."

See also *Board of Trade of Kansas City* v. *United States*, 314 U. S. 534, 546.

In numerous pleadings filed in the proceeding before the Commission, appellants made statements which again conflict with their contentions in the case at bar. For example, the Coal Trade Association of Indiana *actually alleged in their petition for suspension that the dual basis of rates resulted in unjust preference of shippers on the Milwaukee Railroad and undue prejudice of shippers on other lines* (R. 132, fol. 243). Their position was reiterated by their witness, Mr. Harold V. Scott (R. 1060). Further, in their Exceptions to the Examiner's Proposed Report, dated July 15, 1944, it was contended:

"In these proceedings, under the issues involved in the Investigation and Suspension case and the 13th Section case, the present record is sufficient for the Commission to determine the propriety of the level of the rates from the mines in Illinois and Indiana to these destinations in northern Illinois and Beloit, and the differentials to apply as between the mine origin groups in said States in the movement of coal to such destinations." (Page 17.)

It was also there urged that:

"The record shows the transportation conditions within Illinois and from Indiana to these destinations to be the same. *There is no evidence omitted from this record which is necessary for a decision of these issues.* Why postpone again to a future proceeding, whether by way of arbitration or by way of some hitherto unknown type of proceeding before this commission, the question of the final disposition of the issue of the proper relationship and measure of the rates from these two competing sets of origin groups in Illinois and Indiana to this important destination territory? * * * We urge that the Commission exercise the jurisdiction conferred on it by the Act, and enter an order based on the facts, * * * and that there be no further postponement in making effective within this territory a rate adjustment that is fair and reasonable to all concerned, a rate adjustment that protects the interests of the consumer as well as the producers of coal in this territory." (Pages 111-112. Italics added.)

Attention should also be called to the fact that Mr. W. H. Kuhls, witness for the Milwaukee Railroad, testified that he did not see why there should not be but one rate via all routes from all mines in each of the Indiana groups to each destination in northern Illinois (R. 591).

The following is from his cross-examination:

"Q. * * * the other roads in Indiana, if they are going to move coal in a competitive market must have

the same rates as you have, must they not, from the Brazil-Clinton Field?

"A. I think that is axiomatic." (R. 542.)

He also said:

"In my opinion, in normal times coal from the same origin group would have to have a parity of rates with competing coal to be marketed in this territory." (R. 563.)

A witness representing coal mines in the Princeton and Boonville groups in Indiana testified to the same effect (R. 1466).

The Milwaukee's witness also admitted that there were no differences in distances or in transportation conditions that warranted lower rates via the Milwaukee's single-line routes than via other routes from the same group (R. 541-542, 553-554).

The Milwaukee Railroad and the other appellants ought not to be now heard to say that the evidence does not support the Commission's report and order.

In their brief before this Court, appellants Ayrshire Collieries Corporation, et al., attack the Commission's finding of undue preference and prejudice by saying that there was no proof that the dual basis of rates injured shippers on lines other than the Milwaukee (Brief, p. 48). As shown, however, the Commission's finding to the contrary is supported by the record, including statements of appellants' own witnesses. Further, the Court should note the following from *Northeast Kentucky Coal Bureau* v. *Chesapeake & O. Ry. Co.*, 206 I. C. C. 445, 448, order upheld *Chesapeake & O. Ry. Co.* v. *United States*, 11 F. Supp. 588, 296 U. S. 187:

"Even though complainant's members may not be injured, their competitors are preferred. Preference, not necessarily injurious in itself, affords opportunity

to gain success over and injure the other party. The act is specifically directed against undue preference and all other forms of unjust treatment of the shipping public."

There is substantial evidence to support the Commission's conclusion that the present and proposed rates are in violation of Sections 2 and 3 of the Interstate Commerce Act.

(C)

Appellants say that there are inadequate findings to support the Commission's conclusions. They say that those conclusions, to the effect that the rates are unjustly discriminatory and unduly preferential and prejudicial, are not supported by factual findings to enable this Court to understand the Commission's rationale. This contention is not tenable. There are ample findings of fact in the report, as explained in the preceding subsection of this brief.

The Commission's report explicitly sets forth that shippers and receivers using the higher rates from the Indiana groups were being and would continue to be unjustly discriminated against and unduly prejudiced because other shippers and receivers had available and were using the lower rates accorded by the Milwaukee Railroad. In the *Chicago Heights Trucking Company case, supra*, this finding that some shippers would be accorded lower rates than others was held sufficient, but here the Commission's report goes on further to elucidate the finding of unjust discrimination and undue prejudice by pointing out how the lower rates had been accompanied by a virtual monopoly of the traffic.

These appellees submit that the Commission's order is supported not only by substantial evidence but also by proper and adequate findings of fact. See *United*

States v. *Pierce Auto Lines*, 327 U. S. 515, 535-6. As Justice Cardozo said of another report of the Interstate Commerce Commission—

> "In this instance the care and patience with which the Commission fulfilled its appointed task are plain, even to the casual reader, upon the face of its report." (*Mississippi Valley Barge Line Co.* v. *United States*, 292 U. S. 282, 287.)

The thoroughness and painstaking consideration which are evident from this report go a long way toward refuting appellants' contentions.

IV.

The Commission's Findings and Order Are Not Invalid Because of Any Lack of Effective Control on the Part of the Milwaukee Railroad Over the Higher Joint Line Rates.

In Conclusion No. 1 (R. 210), the Commission found that to destinations in northern Illinois the present and proposed rates from the Indiana groups were causing and would continue to cause unjust discrimination and undue preference and prejudice in violation of Sections 2 and 3 of the Interstate Commerce Act. In Conclusion No. 2 (R. 210-211) a comparable finding was made with respect to the proposed rates to Beloit, Wis. The Commission ordered the violations of Sections 2 and 3 removed and stated what rates and relationships should be established for the future.

One of the effects of this order, as previously explained, was to require the carriers to do away with the dual basis of rates from the Indiana groups and to establish one basis of rates from each group. Appellants attack the order on the basis of the decision in *Texas & Pacific Ry.*

Co. v. *United States*, 289 U. S. 627, where this Court said (p. 650):

> "A carrier or group of carriers must be the common source of the discrimination—must effectively participate in both rates, if an order for correction of the disparity is to run against it or them. Where an order is made under section 3 an alternative must be afforded."*

Appellants contend that the Commission's order for correction of the disparity—*i. e.*, for the elimination of the dual basis of rates—is invalid because of the fact that the Milwaukee, they say, has no control over and does not effectively participate in the higher joint-line rates from the Indiana groups. Appellants allege that the Milwaukee could not force the carriers participating in the joint-line rates to reduce such rates, and that therefore to correct the unlawfulness by making the single-line and joint-line rates the same, the Milwaukee would have to increase its single-line rates to the level of the joint-line rates. In other words, having no control over the joint rates, the Milwaukee says it has no alternative, and not being afforded an alternative, it says that the order of the Commission contravenes the principle stated in the *Texas & Pacific case*. (See R. 13, 18, 47-48.)

(A)

A complete answer to appellants' contention lies in the footnote to the passage quoted above from the *Texas & Pacific case*, which footnote appellants ignore. That footnote says that where an order is made under Section 15, the Commission does not need to afford an alternative:

*Succinctly stated in the syllabus as follows: "A carrier may not be held responsible for undue prejudice or preference to a locality in respect of rates unless both of the localities affected are upon its lines or it effectively participates in rates to both so that it may have the choice of raising one rate, lowering the other, or altering both."

> "This is not true of an order pursuant to § 15(1), prescribing maximum or minimum or maximum and minimum rates; but the present orders were not issued under that section."

In other words, where the Commission finds undue preference and prejudice to exist, it can prescribe the maximum or minimum or specific rate which shall be established by the carriers to get rid of the undue preference and prejudice, and does not have to afford the carriers or any of them alternative methods of curing the unlawfulness. Where the Commission requires certain rates to be established in such a case, it ceases to be material whether or not any carrier or group of carriers has effective control over the rates, because the question of affording alternatives no longer arises.*

This principle was one of the grounds of decision in *Youngstown Sheet & Tube Co.* v. *United States*, 295 U. S. 476, where this Court upheld an order of the Interstate Commerce Commission which required a certain rate to be established in order to eliminate unjust discrimination:

> "There is no merit in the contention that the order was a § 3 order and invalid for failure to afford the carriers an alternative of raising the contested rate or lowering others to remove discrimination. It is true the Commission found prejudice to shippers all rail, but in essence the order entered was a § 15 order and not one made under § 3." (P. 480.)

In short, before one who has been ordered to remove discrimination can do so, he must have sufficient control over the situation to remove it. Hence the rule applicable to Section 3 orders, that an alternative must be afforded.

---

* "Since this power [to prescribe minimum or specific rates under Section 15] is specifically applicable to cases of undue prejudice, a preferential rate can be eliminated by its exercise without allowing a carrier any choice of alternatives, and hence presumably without the necessity of a finding that the railroad controls both rates." 47 Harv. L. Rev. 494, 501.

But when the order is made under Section 15, the situation is different. The coercive legislative power of government is applied. The reason for the effective control-and-alternative rule in such cases no longer exists.

The proceeding before the Commission was begun and carried on under the provisions of Section 15, as was explained previously in this brief, and the rates shown in Appendices A and D as approved rates are, by the order under attack, prescribed as specific rates under the authority of Section 15 of the Interstate Commerce Act.

Appellants say the Commission did not prescribe any rates by its order. This is not so. The Commission found unjust discrimination and undue preference and prejudice to exist, and ordered the carriers to publish rates that would put an end to those violations of law. The Commission set forth in Appendices A and D rates which would effectuate that end, such rates also being maximum reasonable rates (R. 211). The report and order speak in terms of relationships, but under the order *no other rates could be established* which would get rid of the unjust discrimination and undue preference and prejudice the Commission found to exist.

The order relates the rates from Indiana to Beloit to the rates from Illinois to Beloit, and there being no proposal to alter the latter, rates from Indiana to Beloit had to be established under the order exactly as set out in Appendices A and D (R. 210-211). The rates to Rockford being held 15 cents under the rates to Beloit by virtue of the Commission's order in *Fairbanks-Morse & Co.* v. *Alton & S. R.*, 251 I. C. C. 181, rates to Rockford, and hence northern Illinois, also had to be established exactly as set forth in Appendices A and D.

The Commission's order clearly *required* that the rates shown in Appendices A and D as approved rates be es-

tablished, and they were in fact established, pursuant to that order, effective July 23, 1946. Appellants' contention regarding the Milwaukee's alleged lack of effective control over the joint line rates from the Indiana groups, should be rejected.

(B)

But even apart from the fact that the order in this case was entered under Section 15 and therefore questions of an alternative order and effective participation and control are not relevant, appellants' argument is untenable for the reason that the order is directed at a group of railroads, not the Milwaukee only, and that group of railroads, including some of these railroad appellees, do in fact constitute a "group of carriers," such as referred to in the *Texas & Pacific case*, which is the "common source of the discrimination."

The New York Central Railroad, the Chicago & Eastern Illinois Railroad, and the Pennsylvania Railroad each serves Brazil as well as Linton, and each, in conjunction with the Milwaukee Railroad as a destination carrier, participates in the joint-line rates in question from both Brazil and Linton to Rockford. Hence, those four carriers, as a group, are the carriers whose rates cause the undue preference and prejudice. As this Court said in *Central R. R. Co. of New Jersey* v. *United States*, 257 U. S. 247, 259:

> "Discrimination may, of course, be practiced by a combination of connecting carriers as well as by an individual railroad; and the Commission has ample power under § 3 to remove discrimination so practiced. See *St. Louis Southwestern Ry. Co.* v. *United States*, 245 U. S. 136, 144."

The Commission has found that the rates involved reflect relations among themselves which are unduly preferential of certain origins and unduly prejudicial to others. It is the *entire adjustment,* not just the rates of the Milwaukee Railroad, which causes undue preference and prejudice. The Commission's finding runs against the whole multitude of relationships between one rate and another existing in this adjustment.

There is no doubt but that the carriers participating in this adjustment of rates, as a group, exercise control over the rates involved in the structure and the relations reflected by those rates. A quite similar situation was described by the Commission as follows in *Ohio-Kentucky Associated Industries* v. *Ahnapee & W. Ry. Co.,* 256 I. C. C. 137, 143:

> "Each of [the railroads] effectively participates in joint rates between every one of the origins named and the destination territory described in the complaint, and *together* they constitute a *group of carriers* which is the *common source* of the alleged prejudice to Cincinnati-Louisville and preference of St. Louis. In other words, the cause of the alleged undue prejudice and preference here is *the entire structure of rates established by defendants* from both the St. Louis and Cincinnati-Louisville groups. This structure is a single entity composed of interrelated rates bound together by origin differentials and destination groupings, and, so long as it remains in existence, *each of these defendants effectively participates not only in the rates over its own line but in every rate in the entire structure, and together they control all rates therein.*" (Italics added.)

Appellants approach this question as though the structure could be broken down into particular rates and the *Texas & Pacific case* doctrine of effective participation applied to such individual rates. But in an adjustment

as competitive and delicately balanced as is this coal rate adjustment, such an approach ignores the fact that the rates constitute an integrated and cohesive structure, are interdependent, and cannot properly or adequately be considered as individual rates. As the Commission said in the leading case of *Albany Port District Commission* v. *Ahnapee & W. Ry. Co.*, 219 I. C. C. 151, 172:

> "Here the cause of the alleged undue prejudice and preference is the *entire structure* of port rates established by defendants serving the north Atlantic ports and their connections. *This structure is not a loose aggregation of separately established rates, but a single entity composed of interrelated rates bound together by the port differentials.*" (Italics added.)

See also *Beaumont, Texas, Port Commission* v. *Abilene & S. Ry. Co.*, 253 I. C. C. 127, 131-2.

If appellants were right in their contention, the Commission "would be without power to remove prejudice existing in any extensive rate adjustment." *Albany Port District Commission* v. *Ahnapee & W. Ry. Co., supra*, p. 172.

The Interstate Commerce Commission has pointed out in a recent case that:

> "Section 3 of the act was designed expressly to provide a forum in which a shipper may complain of an adjustment which, as here, tends to concentrate the movement of the traffic from other origins and deprives him of a fair opportunity to make shipments." (*Franklin Limestone Co., Inc.* v. *Alabama G. S. R. Co.*, 264 I. C. C. 753, 758.)

That statement can not be gainsaid, and it is relevant to the controversy here before this Court.

(C)

Finally, an answer to appellants' contention is this: the absence or existence of effective participation in and control over the rates making up this adjustment is *a question of fact*, and on this the Commission has spoken, both by its report and order and by its denial of the petitions for reconsideration which made this same argument. The Commission's finding, on a factual matter entrusted to it for determination, being adequately supported by the evidence of record, should not be disturbed by a court. *Virginian Railway* v. *United States*, 272 U. S. 658, 663; *Manufacturers Railway Co.* v. *United States*, 246 U. S. 457, 481-2.

V.

There Is Substantial Evidence to Support the Prescription of the Relationships Reflected By the Rates Set Forth in the Report As Approved Rates.

It would appear from the many criticisms which they make of the relationships required by the report, that appellants seek to create the impression that in determining upon those relationships the Commission was guilty of arbitrary and capricious action. Nothing could be further from the truth. The rates set forth in the report as approved rates, *i. e.*, rates reflecting relationships which would rid the adjustment of unjust discrimination and undue preference and prejudice, reflect careful consideration. There is substantial evidence to support the order by which those relationships and rates were prescribed.

In its report the Commission finds that the dual basis of rates from the Indiana groups to Beloit

and these northern Illinois destinations is unlawful (R. 184) and that the proposed revision of rates is unreasonable and results in unjust discrimination and undue preference and prejudice (R. 208, 210-211). The Commission then proceeds—

> "* * * to a determination of the fair and reasonable relations which should exist between the respective *origin groups*, and between the Indiana and the Illinois groups, to these destinations; * * *." (R. 184.)

Upon considering the evidence bearing on this aspect of the case (R. 184-195), the Commission arrives at the conclusions reflected in Appendix A (R. 213-217).

First, the Commission discusses the comparative operating conditions from the Illinois and Indiana mines to this destination territory (R. 185). Then it deals with the differences in competitive conditions as reflected by the tonnage moving from the Illinois mines and the Indiana mines to these destinations and to all destinations (R. 185-186). The Commission then considers differences in competitive conditions as reflected in figures of production for the various origin groups in Illinois and Indiana. (R. 186.)

The Commission then passes to the proposed relation between the rates from the Boonville group and the rates from the Princeton group, and after considering production figures, the number of mines in the Boonville group and the location of the largest, the tonnage moving from Boonville to this destination territory, distances, and the results that would flow from merger of the groups, the Commission concludes that the rates from Boonville should be on the same basis as from Princeton (R. 186-187). Then the Commission takes up the proper relation between the Brazil and Linton groups, and

after stating and considering the rates, averages of rates and comparative differentials, and after considering the volume of movement from the two groups since 1923, concludes that the proper differential between those two groups should be 10 cents (R. 187). Subsequently, the Commission considers the differential between the Linton and Princeton groups and after considering the evidence on that matter, permits it to remain at 7 cents (R. 190).

In short, the Commission, on clearly substantial evidence, concludes that the proper and lawful differentials between the Indiana groups should be Brazil 10 cents less than Linton, and Princeton and Boonville each 7 cents over Linton.

The Commission gives much consideration to the question of the relation of the rates from Indiana to those from Illinois. The key paragraph in this part of the report reads as follows (R. 187):

> "If the proposed rates from the Indiana groups which are higher than the so-called normal basis were reduced to the latter basis, and if the single-line rates of the Milwaukee and the Illinois Central from the Linton district were increased to the normal basis proposed from the other mines in that group, the rates from all of the Brazil mines made 10 cents less, and the Princeton-Boonville rates made 7 cents more, the resulting rates to the 12 destinations would average $1.95 from Brazil, $2.05 from Linton, and $2.12 from Princeton-Boonville. Such rates, referred to hereinafter as approved rates, compare favorably with the proposed rates from the Illinois groups to the same destinations, with the exception of certain of the rates from the Fulton-Peoria, Danville, and DuQuoin groups."

The Commission's approach can be more easily apprehended if that paragraph is considered step by step. The Commission says that (1) if one eliminates the rates from the Indiana groups that are higher than the group

basis and that are therefore actually no factor in moving traffic ("If the proposed rates from the Indiana groups which are higher than the so-called normal basis were reduced to the latter basis,"), and (2) if the proposed joint-line rates from Linton are used via all routes to the twelve representative destinations ("and if the single-line rates of the Milwaukee and the Illinois Central from the Linton district were increased to the normal basis proposed from the other mines in that group,"), and (3) if the rates from Brazil to each of those destinations are made 10 cents under such rates from Linton, which is the differential the Commission has just concluded would be the lawful and proper differential ("the rates from all of the Brazil mines made 10 cents less,"), and (4) if the rates from Princeton and Boonville are made 7 cents higher than such rates from Linton, which is the differential the Commission has just concluded would be lawful and which it orders continued ("and the Princeton-Boonville rates made 7 cents more,")—then, the Commission says the rates thus established to the twelve destinations which are representative of this territory, would average $1.95 from Brazil, $2.05 from Linton, and $2.12 from Princeton-Boonville. The Commission says that such rates "compare favorably with the proposed rates from the Illinois groups to the same destinations, with the exception of certain of the rates from the Fulton-Peoria, Danville, and DuQuoin groups." The Commission then proceeds to treat the rates from those three Illinois groups last named. (R. 188-189.)

Then the Commission goes on to show that such average rates from *each* of the Indiana groups to the twelve representative northern Illinois destinations compare favorably with the average of the rates approved (later prescribed as minima by order in No. 28881; see *supra*,

pp. 10-11) from Illinois groups to those destinations. For example, the Commission shows that when measured by the so-called Indiana-Illinois and Midland scales of coal rates, the average of the approved rates from Brazil to the twelve destinations compares favorably with the average of the approved rates to those same twelve destinations from (1) the Danville group, (2) the Springfield group, (3) Fulton-Peoria, (4) Princeton-Boonville, and (5) southern Illinois (R. 189). Similar detailed comparisons are made with respect to the rates from the other Indiana groups (R. 189-190). The Commission concludes with a comparison of the average of the approved rates to these destinations from the Indiana groups as a whole, with the average of the approved rates to these destinations from the Illinois groups as a whole (R. 191).

We come now to a specific criticism which appellants lodge against this reasoning and approach on the part of the Commission. They say that in prescribing rates to *individual* destinations, the Commission cannot be guided by the *average* of the rates from any one origin group to representative destinations.

While appellants thus contend that the Commission should have constructed its prescribed rates with particular regard to individual rates and destinations, they said before the Commission that "*We are here dealing with a rate structure, not with individual rates to each individual destination* in this whole northern Illinois territory." Exceptions of Coal Trade Association of Indiana to Proposed Report of Examiner, p. 106. (Italics added.) Again in those Exceptions it was stated (p. 106):

> "What must be decided is whether *the body of rates* within Illinois on coal moving *to this destination territory* is on a higher level than *the body of rates* from the Indiana groups *to the same territory.*" (Italics added.)

In determining upon the prescribed rates in the manner in which it did, the Commission proceeded in the very way advocated by the witness for the Milwaukee Railroad, Mr. W. H. Kuhls, who urged that the destination territory be treated "*as a unit*" (R. 548) and "*as a whole*" (R. 593). The witness for the Coal Trade Association of Indiana testified to the same effect:

> "Q. What you mean by that is that the whole thing is one adjustment?
>
> A. That is right.
>
> Q. You can't take any part of it any more than you can take the short and long haul of a particular group?
>
> A. That is right." (R. 1148.)

The Commission has in this case considered the rates on coal to this destination territory, and has, after obviously careful consideration, decided upon a principle to be followed in constructing rates to this territory. The Milwaukee contends that principle is arbitrary and capricious. It clearly is not. It is based on a reasoning and a method which appellants themselves advocated and to which the Commission has given much thought. The problem is technical and the Court ought not to hold the method and reasoning improper. "The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances." *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U. S. 575, 586.

Nor does the Commission's order produce any arbitrary result. Appellants argue that the prescribed rates are arbitrary because to Rockford, which they select as an example, the rate prescribed from the Brazil group is 12

cents higher than the rate prescribed from the Springfield group, although the average distance from each group to Rockford is about the same.*

But the Commission explained fully in its report why the rates it prescribed did not strictly reflect distance (R. 194-195). It said in part (R. 194):

> "In approving the foregoing rate relations, we have kept in mind the importance to consumers, coal operators, and railroads of relating these differentially related coal rates, not strictly upon distance, but so as to afford all concerned a fair opportunity to compete in the purchase, sale, and transportation of coal from Illinois and Indiana mines to these destinations. The rates between the various origin groups in these fields have never been made with primary regard for distance, and to so make them now would have the effect eventually of eliminating practically all competition between most of them, a result which would be highly undesirable to the consumer, whose interests we may not disregard."

In referring to the rates it was prescribing, the Commission said it was "according such weight to distance as seemed to us to be fair and reasonable." (R. 195.) It concluded by saying (R. 195):

> "It is plain, therefore, that comparisons based on distance, especially as between Indiana and Illinois groups to particular destinations, cannot be accepted as controlling, but must be evaluated with the above facts in mind."

In Finding 7 the Commission stated:

> "Normally, there is severe competition in the marketing of coal in this destination territory between the mine operators in each of the origin groups, and between the respective Indiana, Illinois, and western Kentucky groups, *and such competition has been and*

* To the twelve representative northern Illinois destinations used by the Commission, the average distance from Brazil is 256 miles, and from Springfield is 225 miles, a difference of 31 miles. For an average difference in distance between Brazil and Linton of 37 miles, appellants have consistently contended for a differential of 10 cents, which the Commission prescribed (R. 220).

> *should continue to be given important consideration* in the maintenance of the differentially related and finely balanced rate structure on this coal which is required to meet the needs of the consuming public, the mine operators, and the carriers concerned." (R. 207. Italics added.)

It may be helpful for the Court to have before it this statement made by the Commission in *Appalachian Power Co. v. N. & W. Ry. Co.*, 144 I. C. C. 333, 342:

> "It is a generally accepted practice to maintain coal rates on group bases on the theory, often vigorously supported by both operators and consumers, that such an adjustment gives consumers an opportunity to purchase coal in competitive markets, and enables farther distant mines to compete at the various points of consumption with mines which are nearer to such points. *The establishment of distance rates would tend to localize the source of supply of the consumers, destroy to a large extent the existing competition, and probably have an important influence on the cost of coal.*"

See also *Iron Ore Rate Cases*, 41 I. C. C. 181, 214; *Passenger Fares, District of Columbia, Nearby Virginia*, 256 I. C. C. 769, 781.

Appellants ask this Court to hold that the Commission must prescribe a parity of rates to Rockford from Brazil and Springfield.* That is not the function of this Court and this Court must under the law reject appellants' contention. The Commission has taken an approach to this case and has engaged in certain reasoning and has pursued a certain method of determining upon reasonable, non-discriminatory, and non-prejudicial rates. Appel-

* The relation of the rates from Brazil and Springfield to Rockford can not be of much importance to the Milwaukee or the Indiana coal operators, for Springfield ships very little coal to these destinations. In 1941, Brazil shipped 116,511 tons to Rockford while Springfield shipped only 3,358 tons. In the first six months of 1942, the tonnage from Springfield was only 1.3 per cent of the tonnage from Brazil (R. 1677 (Ex. 4, Sec. VIII). See infra, p. 72.

lants ask this Court to substitute its judgment as to the rightness of this approach and reasoning for the judgment of the Commission. "The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body." *Mississippi Valley Barge Line Co.* v. *United States*, 292 U. S. 282, 286-7. There can be no question here but that the Commission's order is supported by substantial evidence and rests upon a rational basis.

In *Hanna Furnace Corporation* v. *United States*, 53 F. Supp. 341, a three-judge court, in sustaining an order of the Commission, said (p. 344):

> " * * * the Supreme Court in *Rochester Tel. Corp.* v. *United States*, 307 U. S. 125, * * *, said ' * * * Even when resort to courts can be had to review a Commission's order, the range of issues open to review is narrow. Only questions affecting constitutional power, statutory authority and the basic prerequisites of proof can be raised. If these legal tests are satisfied, the Commission's order becomes incontestable.' Vide also: *Interstate Commerce Comm.* v. *Union Pacific R. Co.*, 222 U. S. 541, * * *. In view of the investigations made by the Commission in the matters of concern here, the *'knowledge of conditions, of environment and of transportation relations' so acquired has additional weight.*
>
> "The rule is too well settled to admit of any doubt that a finding by the Commission, supported by substantial evidence, must be sustained." (Italics added.)

Appellants would have this Court hold that the Commission's approach, theory, and reasoning in this case are unlawful notwithstanding the fact that as shown heretofore in this brief, the Commission's decision is based on the approach, theory and reasoning advocated by appellants throughout the proceeding before the Commission.

Thus appellants' only quarrel with the decision is that it did not result in the rates and relationship they contended for. In *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U. S. 575, 586, this Court said:

> "The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances. Once a fair hearing has been given, proper findings made and other statutory requirements satisfied, the courts cannot intervene in the absence of a clear showing that the limits of due process have been overstepped. If the Commission's order, as applied to the facts before it and viewed in its entirety, produces no arbitrary result, our inquiry is at an end."

Appellants now would have this Court say that the Commission did not give the factor of distance enough weight in prescribing these rates, but rather gave conditions other than distance, *e. g.*, competitive conditions, too much weight. This is clearly an administrative question as to which this Court may not properly substitute its judgment for that of the Commission. See *O'Keefe* v. *United States*, 240 U. S. 294, 303-4; *Alton R. Co.* v. *U. S.*, 315 U. S. 15, 22-3; *Scripps-Howard Radio, Inc.* v. *Federal Communications Commission*, 316 U. S. 4, 10-11; *Baltimore & O. R. Co.* v. *United States*, 65 F. Supp. 962, 966.

In *Interstate Commerce Commission* v. *Union Pacific R. Co.*, 222 U. S. 541, 549-550, this Court said:

> "With that sort of evidence before them, rate experts of acknowledged ability and fairness, and each acting independently of the other, may not have reached identically the same conclusion. We do not know whether the results would have been

approximately the same. For there is no possibility of solving the question as though it were a mathematical problem to which there could only be one correct answer. Still there was in this mass of facts that out of which experts could have named a rate. The law makes the Commission's finding on such facts conclusive."

It should be pointed out that before the Commission the present appellants urged that distance should *not* be given undue consideration in prescribing coal rates in this territory. In its original brief before the Commission, which is embraced by the record on appeal, the Coal Trade Association of Indiana said:

> "The Commission has recognized for years that distance is not a controlling factor in determining the propriety of a group and differential adjustment. * * * We respectfully urge the Commission to * * * continue to consider the more important and broader aspects of competition, interests of the public and the rights of carriers to participate in the movement of traffic to a given destination territory; * * *." (Pp. 74, 104-5.)

And in its Reply to Exceptions to the Proposed Report of the Examiner:

> "We submit that the fact that as between one group in Illinois and one group in Indiana, to a particular point, the rate for the same distance is slightly less from the Illinois group than from the Indiana group, does not have any substantial meaning in a case of this type, any more than when the reverse is shown. *Group and differential rates are not made with such regard for distance. The whole of the rate structure*, intrastate and interstate, from the related groups must be considered *and not individual rates* from each point in each group to each destination. If these cases were to be decided with that meticulous regard for distance, the group and differential basis of making rates would have to be dis-

carded and rates made on purely mileage scales, which no party advocates, and which would be destructive of the coal industry in these States and injurious to the consumers of coal in this territory." (P. 28. Italics added.)

The Court should hold that in requiring the establishment of the relationships reflected by the rates shown as approved rates in its report, the Commission was acting upon substantial evidence and that its order rests upon a rational basis and is not arbitrary or capricious.

A word may be said about another of appellants' contentions. They say the Commission required an increase in the Milwaukee's rates from Brazil and Linton in order to keep in effect a low 7-cent differential between the Linton and Princeton groups, which differential the Commission did not find was lawful. This argument is unsound. The Commission referred to that differential and said that it "necessarily reflects itself in relatively higher rates from the nearer Indiana groups, as well as relatively lower rates from the more distant Indiana group or groups, than might otherwise be warranted." (R. 190.) The Commission said, however, that since that 7-cent differential "is of long standing, is in effect generally throughout the Northwest, and is not here sought to be changed, we do not feel warranted in approving its disturbance." (R. 190.) The Milwaukee says the Commission did not pass on the lawfulness of that 7-cent differential. That is incorrect, for Finding 19 in the report (R. 210) explicitly states that the approved rates and relationships in Appendix A will result in a "reasonable, non-discriminatory, and non-prejudicial adjustment." Further, throughout this case the Indiana producing interests themselves strongly defended this

very differential. There is clearly no warrant for the Milwaukee's charge that the Commission penalized shippers in the Brazil and Linton groups for the purpose of preserving a suspect differential between Linton and Princeton.

A final answer may be made to what seems to be appellants' principal objection to the Commission's order, namely, the Commission's having prescribed higher rates to Rockford and Beloit from Brazil than from Springfield for substantially equal distances. These are but two of the more than 77 destinations involved. To the 12 representative destinations the average distance from Springfield is 31 miles less than from Brazil. The average level of the prescribed rates, as measured by the two different scales of coal rates used by the Commission, is approximately the same from both groups (R. 220). Appellants contend that the existing rates from Springfield and Brazil to the destinations involved were on a parity. The record shows, however, that to the 12 representative destinations the average rates from Springfield were 14 cents less than from Brazil, while the prescribed rates average only 12 cents less than from Springfield (R. 220). As the Commission observed in its report, *there has been no fixed relation between those groups to this territory* (R. 176). The Milwaukee has admitted that "the Springfield, Illinois group is not an important factor in this destination territory." (Petition for Reconsideration, p. 13.) Appellees submit that appellants' contention, therefore, is without merit.

CONCLUSION.

The rates on coal in this territory have been before the Commission a great many times over a period of many years. From at least as far back as 1915, in the *Illinois Coal Cases*, 32 I. C. C. 659, the Commission has continually been coping, as conditions changed and as the public interest required it, with the problem of achieving a proper and lawful basis of rates on this very important commodity.

The Commission has said that in this Illinois coal adjustment was "a rate situation which presents unusual difficulties." *Illinois Coal Traffic Bureau* v. *Ahnapee & W. Ry. Co.*, 204 I. C. C. 225, 241. It is fully as sensitive and competitive as the grain rate structure, the proper adjustment of which this Court said was "enmeshed in difficult judgments of economic and transportation policy. Neither rule of thumb, nor formula, nor general principles provide a ready answer." *Board of Trade of Kansas City* v. *United States*, 314 U. S. 534, 548. Continuing, the Court said:

> "We certainly have neither technical competence nor legal authority to pronounce upon the wisdom of the course taken by the Commission. It is not for us to tinker with so sensitive an organism as the grain rate structure, only a minor phase of which is caught in the record before us. If we were to grant the relief sought by the appellants, we would be restoring evils which the exclusive rate-break adjustment was designed to remove—evils which, for all we know, would be far more serious than those complained of by the appellants."

These appellees contend that the Commission had jurisdiction to make the order under attack, that the order is supported by substantial evidence and adequate findings of fact and is in every respect valid. Appellees ask this Court to affirm the decree of the lower court dismissing the complaints.

Respectfully submitted,

ERLE J. ZOLL, JR.,
Attorney for The Alton Railroad Company (Henry A. Gardner, Trustee), et al.,
Railroad Appellees.

CHARLES W. STADELL,
Attorney for Central Illinois District Coal Traffic Bureau and Illinois Coal Traffic Bureau,
Appellees.

Chicago, Illinois.
March, 1947.

APPENDIX.

The Interstate Commerce Act, U. S. C. Title 49, provides:

Section 1(5) (a):

> "All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

Section 2:

> "If any common carrier subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered or to be rendered, in the transportation of passengers or property, subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful."

Section 3(1):

> "It shall be unlawful for any common carrier subject to the provisions of this chapter to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port,

port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description."

Section 4(1):

"It shall be unlawful for any common carrier subject to this chapter or chapter 12 of this title to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this chapter or chapter 12 of this title, but this shall not be construed as authorizing any common carrier within the terms of this chapter or chapter 12 of this title to charge or receive as great compensation for a shorter as for a longer distance: *Provided,* That upon application to the Commission such common carrier may in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section, but in exercising the authority conferred upon it in this proviso the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; and

no such authorization shall be granted on account of merely potential water competition not actually in existence: *And provided further*, That tariffs proposing rates subject to the provisions of this paragraph may be filed when application is made to the Commission under the provisions hereof, and in the event such application is approved, the Commission shall permit such tariffs to become effective upon one day's notice."

Section 13(3):

"Whenever in any investigation under the provisions of this charter, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this chapter or chapter 12 of this title with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this chapter or chapter 12 of this title."

Section 13 (4):

"Whenever in any such investigation the Commission, after full hearing, finds that any such rate fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

Section 15 (1):

"Whenever, after full hearing, upon a complaint made as provided in section 13 of this chapter, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this chapter for the transportation of persons or property as defined in the first section of this chapter, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this chapter, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the pro-

visions of this chapter, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed."

Section 15 (7):

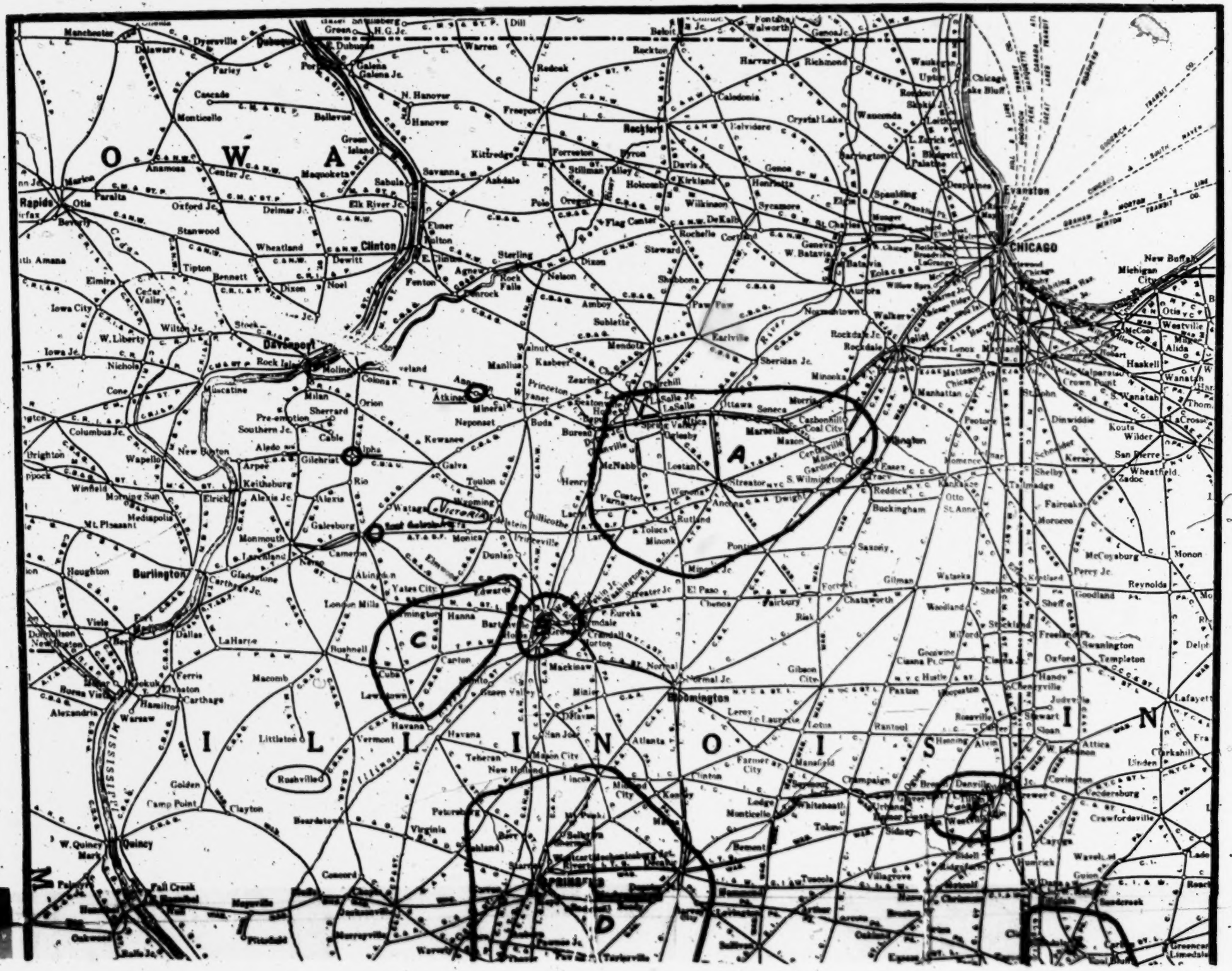
"Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period

than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the Commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after September 18, 1940, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible."

Section 15a (2):

"In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service"

COAL PRODUCING GROUPS IN ILLINOIS, INDIANA AND WESTERN KENTUCKY.



SUPREME COURT OF THE UNITED STATES

No. 467.—October Term, 1946.

Ayrshire Collieries Corporation, et al., and Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Appellants, v. The United States of America, Interstate Commerce Commission, et al.	On Appeal from the District Court of the United States for the Southern District of Indiana.

[April 28, 1947.]

Mr. Justice Murphy delivered the opinion of the Court.

Appellants filed complaints in the United States District Court for the Southern District of Indiana seeking a temporary stay, an interlocutory injunction and a permanent injunction against the enforcement of an order of the Interstate Commerce Commission, dated July 9, 1945. This order had been entered in connection with findings by the Commission that certain railroad tariffs were unlawful and that other rates should be prescribed in lieu thereof. *Coal to Beloit, Wis., and Northern Illinois*, 263 I. C. C. 179.

The complaints requested that the court convene a specially constituted court of three judges, as required by the Urgent Deficiencies Act of October 22, 1913, 38 Stat. 208, 220, 28 U. S. C. § 47, to hear the motions "for a temporary or interlocutory injunction and for final hearing in this proceeding." Circuit Judge Evans and District Judge Igoe were then assigned to sit with District Judge Baltzell to hear and determine these applications, and the cases were consolidated for all purposes. The applications for a temporary stay and an interlocutory injunction were assigned for hearing on January 3, 1946. But on that day, it appearing that the Commission had

postponed the effective date of its order to April 8, 1946, the court ordered that "the hearing upon the petitioners' application for an interlocutory injunction and temporary stay heretofore assigned and set for January 3, 1946, be and the same hereby is, continued to the day of final hearing herein and that said final hearing shall be had on March 25, 1946 . . ." The Commission made a further postponement of the effective date of its order to July 8, 1946, in order that the carriers subject to the order might avoid the necessity of preparing and filing new tariffs prior to the termination of the court proceeding. It also appeared that the illness of Judge Baltzell made it impossible for the court to convene as scheduled on March 25. And so the court reassigned the case for trial on April 22, with Judge Baltzell being replaced by Circuit Judge Major.

Argument was held on April 22 before Circuit Judges Evans and Major and District Judge Igoe at the "final hearing upon the plaintiffs' petitions for a permanent injunction." On June 5, 1946, findings of fact and conclusions of law were filed and entered under the signatures of Judges Major and Igoe; the Commission's order was sustained in all respects and a judgment was entered dismissing the complaints. The following notation was made in the margin of the findings of fact and conclusions of law: "Judge Evan A. Evans became ill subsequent to the hearing of these causes and he is and has been unable to participate in a determination thereof. The findings of fact, conclusions of law and judgment have therefore been entered by the remaining judges of such court."

The case was brought here on direct appeal.[1] We are of the opinion that the District Court's judgment was void, only two of the three judges having participated in the determination of the case. We accordingly do not

[1] Urgent Dificiencies Act of October 22, 1913, 38 Stat. 208, 219, 220, 28 U. S. C. §§ 45 and 47a; Judicial Code § 238, as amended by the Act of February 13, 1925, 43 Stat. 936, 938, 28 U. S. C. § 345.

reach the issues involving the Commission's authority and the merits of its order, issues that have been argued at length before us.

The applicable provisions of the Urgent Deficiencies Act, 38 Stat. 220, 28 U. S. C. § 47, state: ". . . No interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless a majority of said three judges shall concur in granting such application. When such application as aforesaid is presented to a judge, he shall immediately call to his assistance to hear and determine the application two other judges. . . . *Provided,* That in cases where irreparable damage would otherwise ensue to the petitioner, a majority of said three judges concurring, may, on hearing, . . . allow a temporary stay or suspension, in whole or in part, of the operation of the order of the Interstate Commerce Commission for not more than sixty days . . . and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply. . . ."

The requirement that three judges hear and determine suits to enjoin or set aside Interstate Commerce Commission orders had its origin in the provisions of the Expediting Act of February 11, 1903, 32 Stat. 823. That Act required three circuit judges, or two circuit judges and a district judge, to hear cases brought by the United States to enforce the antitrust and commerce laws. This

feature was then extended by the Hepburn Act of 1906, 34 Stat. 584, 592, to all suits brought to enforce or enjoin any order of the Interstate Commerce Commission, "including the hearing on an application for a preliminary injunction." The Act of June 18, 1910, 36 Stat. 539, created the Commerce Court and vested in it jurisdiction over suits to enjoin Commission orders; that court was composed of five judges, four of them constituting a quorum and at least three being required to concur in all decisions. Finally, the Urgent Deficiencies Act of 1913 transferred this jurisdiction to three-judge district courts, as detailed above. *United States* v. *Griffin*, 303 U. S. 226, 232–233.

The policy of requiring the deliberation of three judges in suits to enjoin the enforcement of Interstate Commerce Commission orders is thus a well-established one. It is grounded in the legislative desire to guard against ill-considered action by a single judge in the important and complex situations frequently presented by Commission orders. Such matters are deemed to warrant the full deliberation which a court of three judges is likely to secure.

This requirement, of course, is necessarily technical. It is not a broad social measure to be construed with liberality. It is a technical rule of procedure to be applied as such. See *Phillips* v. *United States*, 312 U. S. 246, 250–251. While due consideration must be given to the statutory policy of expediting the disposition of applications to enjoin the enforcement of Commission orders, the plain language of the Urgent Deficiencies Act compels strict adherence to the command that such applications "shall be heard and determined by three judges, of whom at least one shall be a circuit judge." And we must insist upon obedience to that legislative will even though the disposition of some applications may thereby be delayed.

When the framers of the Urgent Deficiencies Act declared that these applications "shall be heard and determined by three judges," we assume that they meant exactly what they said. The requirement that three judges hear and determine an application means that they must adjudicate the issues of law and fact which are presented by the case, a function which implies that they must weigh the arguments and testimony offered by both sides and vote either to grant or deny the relief sought by the moving party.[2] In addition, "Compliance with the statute requires the assent of the three judges given after the application is made evidenced by their signatures or an announcement in open court with three judges sitting followed by a formal order tested as they direct." *Cumberland Tel. Co.* v. *Public Service Commission*, 260 U. S. 212,

[2] In *State of Ohio* v. *United States*, 6 F. Supp. 386, affirmed, 292 U. S. 498, a case under the Urgent Deficiencies Act was argued before a court of three judges, all of whom participated in the discussions leading to a determination of the case. One of the judges died before the decision was announced. An opinion written by the judge who died was found among his papers after his death and was published as the opinion of the court, concurred in by the other two judges. The opinion had been written pursuant to an arrangement made at a prior conference of the three judges. The findings of fact and conclusions of law, which were filed some time after the opinion, were signed only by the two surviving judges. The matter, however, was not raised by the parties on appeal and was not considered or decided by this Court. The mere fact that the case was entertained by this Court is no basis for considering it as authoritative on the jurisdictional issue, it being the firm policy of this Court not to recognize the exercise of jurisdiction as precedent where the issue was ignored. *United States* v. *More*, 3 Cranch 159, 172; *Snow* v. *United States*, 118 U. S. 346, 354–355; *Cross* v. *Burke*, 146 U. S. 82, 87; *Louisville Trust Co.* v. *Knott*, 191 U. S. 225, 236; *Arant* v. *Lane*, 245 U. S. 166, 170.

Cf. *Frellsen & Co.* v. *Crandell*, 217 U. S. 71, where this Court, after Mr. Justice Brewer's death, adopted as its opinion one previously written by him.

218. All three judges, in other words, must fully perform the judicial function.[3] See *Dohany* v. *Rogers*, 281 U. S. 362, 369–370.

It is significant that this Act makes no provision for a quorum of less than three judges. Two judges of a three-judge circuit court of appeals, on the other hand, ordinarily constitute a statutory quorum for the hearing and determination of cases.[4] 28 U. S. C. § 212. The absence of such a quorum provision as to three-judge district courts is a strong corroborating indication that participation by all three judges is necessary to render a valid decision. The Act provides, it is true, that a decision may be reached by a three-judge court if a "majority of said three judges" concur. But that means only that the decision of the three judges need not be unanimous; it does not imply that two judges alone may hear and determine the case.

Moreover, we cannot say that the failure of the third judge to participate in the determination of a case, where the other two are in agreement as to the result, is without significance. The decision reached by two judges is not necessarily the one which might have been reached had they had the benefit of the views and conclusions of the

[3] In *James* v. *Clements*, 217 F. 51, a case had been argued and submitted to a three-judge circuit court of appeals and a decision rendered by a divided vote. A petition for rehearing had been filed and the court had decided that the prior decision was erroneous and that the opposite result should be announced without further briefs or argument. But before an order to that effect could be promulgated, one of the judges died. Since the other two judges were divided in their views, the case was restored for argument before a full bench of three judges. See also *Ryan* v. *Pennsylvania Public Utility Commission*, 44 F. Supp. 912, 914.

[4] But see 32 Stat. 823, as amended by 58 Stat. 272, 15 U. S. C. § 29, which provides that the senior circuit judge and the two circuit judges next in order of seniority shall "hear and determine" appeals from district court judgments in antitrust cases where this Court is unable to consider the appeals because of a lack of a quorum. *United States* v. *Aluminum Co. of America*, 148 F. 2d 416.

third judge. And should the latter have publicly indicated an opinion differing from that of his colleagues, his position might be helpful to the litigants and to this Court if the case were appealed.

It is readily apparent that this statutory requirement has not been met in this case. While all three judges of the specially constituted court heard the oral argument, only two of them participated in the determination of the case. The findings of fact, the conclusions of law and the judgment were all entered without the approval, concurrence or dissent of the third judge. He thus missed the very essence of the judicial function in this case—the actual adjudication of the issues of law and fact. All that we have here is an adjudication by two judges. But under the statute it is not enough that there be an adjudication by two judges. They lack any statutory authority to hear and determine an application to enjoin the enforcement of a Commission order. Any action of theirs in granting or denying such an application is as void as similar action by a single judge. See *Cumberland Tel. Co.* v. *Public Service Commission, supra*, 218–219; *Stratton* v. *St. Louis S. W. R. Co.*, 282 U. S. 10, 16.

It is suggested, however, that the three-judge requirement applies only to applications for interlocutory injunctions against the enforcement of Interstate Commerce Commission orders; and since the decision in this case was one denying a permanent injunction, no complaint can be made that the decision was rendered by less than three judges. Reference is made in this respect to § 266 of the Judicial Code, 28 U. S. C. § 380, which deals with injunctions against the enforcement of state statutes or state administrative orders on the ground of unconstitutionality of the statute involved. Prior to 1925, that section indicated that a three-judge court was necessary only to pass upon applications for interlocutory injunctions. A single judge had jurisdiction to hear the cause on final hearing

and to grant or deny a permanent injunction, thereby permitting him to reconsider and decide questions already passed upon by the three judges on the application for an interlocutory injunction. To end that anomalous situation, an amendment was added by the Act of February 13, 1925, 43 Stat. 938, to the effect that "The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court." The problem then arose as to whether the words "such suit" in this amendment referred only to a suit in which an interlocutory injunction was in fact sought or to a suit in which it might have been, but was not, requested. A series of decisions by this Court has made it clear that the former interpretation is the correct one. A three-judge court must be convened for final hearings on applications for permanent injunctions against the enforcement of state statutes only where an interlocutory injunction has been sought and pressed to a hearing. *Moore* v. *Fidelity & Deposit Co.*, 272 U. S. 317; *Smith* v. *Wilson*, 273 U. S. 388; *Public Service Commission* v. *Wisconsin Telephone Co.*, 289 U. S. 67; *McCart* v. *Indianapolis Water Co.*, 302 U. S. 419. Where an interlocutory injunction is not sought and pressed, a single judge may hear and determine the application for a permanent injunction.

By analogy, it is claimed that the same rule should obtain under the Urgent Deficiencies Act, that a three-judge court should be necessary for final hearings on applications for permanent injunctions only where interlocutory injunctions have been sought and pressed. While it is admitted that an interlocutory injunction was sought in this case, the argument is made that the application was not pressed to a hearing, the need for such temporary relief having been eliminated by the postponement of the effective date of the Commission order. The whole emphasis of the Act, like that of § 266 of the Judicial Code, is said to be directed toward the prevention of

improvident issuance of interlocutory injunctions or restraining orders. Since there was no such danger in this case, the conclusion is reached that the underlying reason for the convening of a three-judge district court is absent here.

The answer to this argument is to be found in the clear language of the Act itself. It provides simply: "and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply." Unlike § 266 of the Judicial Code, there is no reference here to "such suit"—to a suit where an interlocutory injunction is sought and pressed. Rather there is an unambiguous reference to the final hearing of "any suit" brought to enjoin the enforcement of a Commission order. That can only mean any suit seeking permanent relief, regardless of whether interlocutory relief is also requested. And since "the same requirement as to judges" is to apply to the final hearing of any suit, three judges must hear and determine the matter.

In addition, this portion of the Urgent Deficiencies Act was part of the original enactment and was not added to meet a problem like that which arose under § 266 of the Judicial Code. It was drawn against a background of prior statutes which provided for injunctive relief against the enforcement of Commission orders without regard to the presence of a request for temporary relief. The Hepburn Act required a three-judge court for "all" suits brought to enjoin a Commission order, "including the hearing on an application for a preliminary injunction,"—a clear indication that a three-judge court was also necessary where only permanent relief was sought. And the statute which created the Commerce Court, from which the district courts inherited their jurisdiction in this instance, referred to "cases" brought to enjoin or set aside Com-

mission orders, making no distinction as to those in which only permanent relief was sought. We can only conclude that the framers of the Urgent Deficiencies Act meant to require a three-judge court in any suit brought to enjoin the enforcement of a Commission order, including a suit where an interlocutory injunction is not sought and pressed to a hearing.

Time and again this Court has referred to the three-judge court requirement under this Act without making the distinction which has been made under § 266 of the Judicial Code. *Lambert Co.* v. *Baltimore & Ohio R. Co.*, 258 U. S. 377, 381–382; *Baltimore & Ohio R. Co.* v. *United States*, 279 U. S. 781, 784–785; *United States* v. *Griffin*, *supra*, 232–233. Indeed, without passing upon the precise problem, this Court has affirmed judgments of three-judge district courts which had granted permanent injunctions in cases where no interlocutory injunctions had been sought or pressed. See, *e. g.*, *United States* v. *Idaho*, 298 U. S. 105. And see *Hudson & Manhattan R. Co.* v. *United States*, 28 F. Supp. 137, 140.

The language and background of the Act, which have been augmented by the consistent understanding of this Court,[5] thus combine to require the use of a three-judge

[5] The same understanding, that the Urgent Deficiencies Act requires three judges for all applications to enjoin Commission orders while § 266 of the Judicial Code requires a three-judge court only for applications for interlocutory injunctions, is shown in the remarks of Mr. Justice Van Devanter at the Hearing before the Subcommittee of the Senate Committee on the Judiciary on S. 2060 and S. 2061, 68th Cong., 1st Sess., p. 33 (S. 2060 later became the Act of February 13, 1925):

"Section 238 as amended and reenacted in the bill would permit cases falling within four particular classes, and those only, to come from the district courts directly to the Supreme Court. The first and fourth classes are confined to antitrust and interstate commerce cases covered by the second section of the expedition act of February 11, 1903, and the provision in the act of October 22, 1913, respecting the

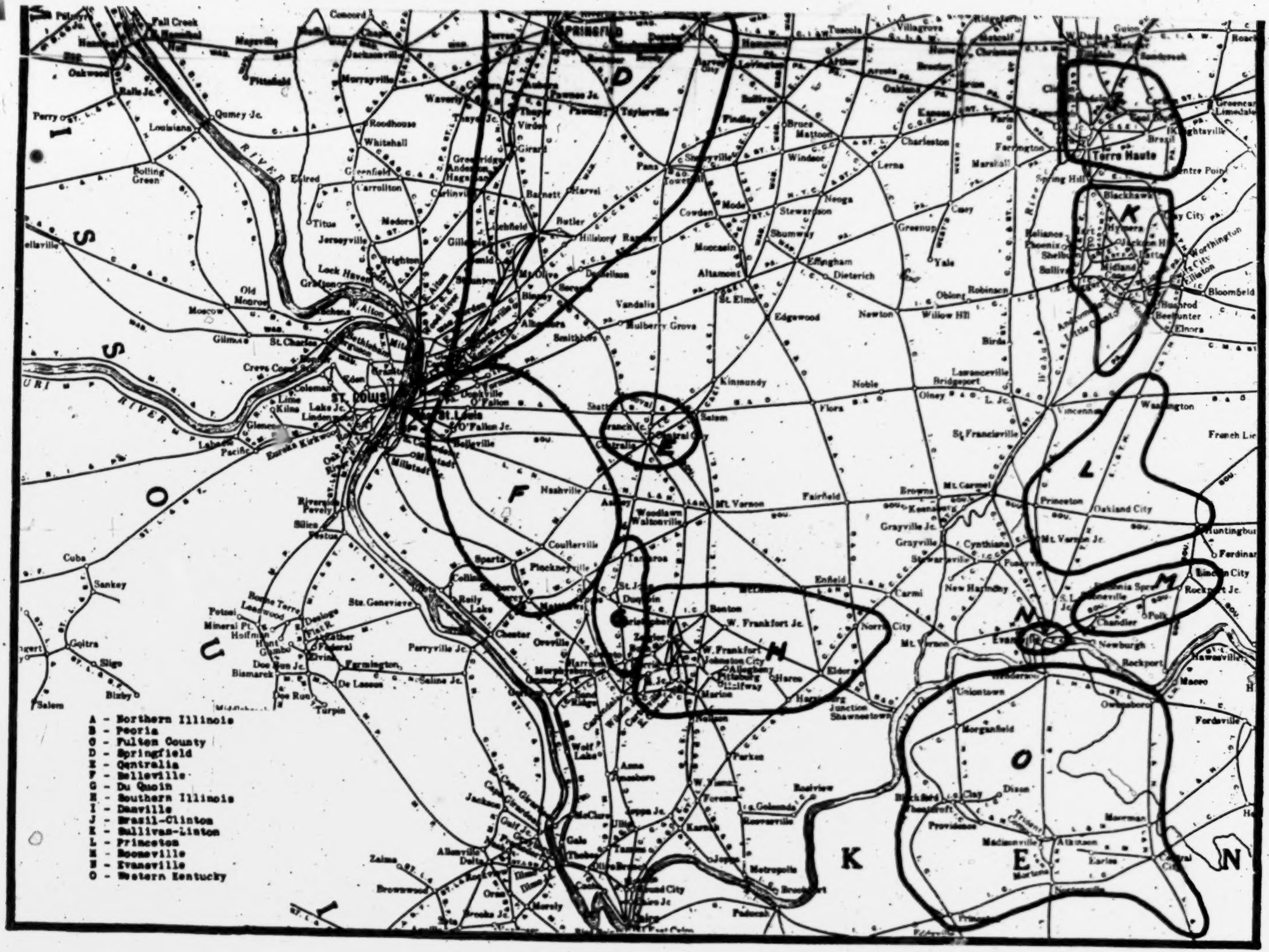
district court in all cases in which a permanent or interlocutory injunction is sought against the enforcement of a Commission order. It matters not in a particular case whether an interlocutory injunction is requested or whether, if such relief is asked, the application is pressed to a hearing. This Act seeks to guard against more than an improvident issuance of interlocutory injunctions by single judges; it also seeks to prevent single judges from issuing permanent injunctions.[6] To that end, Congress has required the use of a three-judge court and we are bound to carry out the letter and the spirit of that requirement. That two judges might, in a particular instance, give the same protection against single-judge action as three judges does not justify ignoring or relaxing the plain requirement that three judges hear and determine all applications to enjoin the enforcement of Commission orders. If such an amendment to the Act is to be made, it must be made by Congress rather than by this Court.

---

enforcement, suspension, etc., of orders of the Interstate Commerce Commission. These cases are heard in the district court by three judges, one of whom must be a circuit judge. This and the character of the cases make it suggest that they should go directly to the Supreme Court rather than through the circuit courts of appeals. The third class is confined to cases wherein the enforcement of a State statute or of an order of a State board or commission is suspended by an interlocutory injunction. Applications for such injunctions are heard in the district court by three judges, one being a circuit judge. These injunctions now go directly to the Supreme Court for review, and the bill continues that procedure. . . ."

See also Mr. Justice Van Devanter's remarks at Hearing before House Committee on the Judiciary on H. R. 8206, 68th Cong., 2d Sess., p. 15.

[6] See also 50 Stat. 752, 28 U. S. C. § 380a, providing that no interlocutory or permanent injunction restraining the enforcement of, or setting aside, any Act of Congress on the ground of unconstitutionality shall be issued by a district court, unless the application shall be presented to a circuit or district judge and shall be heard and determined by three judges, of whom at least one shall be a circuit judge.


A - Northern Illinois
B - Peoria
C - Fulton County
D - Springfield
E - Centralia
F - Belleville
G - Du Quoin
H - Southern Illinois
I - Danville
J - Brasil-Clinton
K - Sullivan-Linton
L - Princeton
M - Boonesville
N - Evansville
O - Western Kentucky
SPRINGFIELD
ST. LOUIS
Terre Haute
Evansville
Paducah
Mt. Vernon
Centralia
Belleville
Du Quoin
Danville
Princeton
Farmington
Harrisburg
Junction
Shawneetown
Mt. Carmel
Olney
Effingham
Salem
Flora
Robinson
Lawrenceville
Bridgeport
Newton
Willow Hill
Kinmundy
Noble
Fairfield
Browns
Grayville
Cowden
Mode
Altamont
Vandalia
Edgewood
Greenup
Yale
Dieterich
Stewardson
Shumway
Windsor
Lerna
Charleston
Mattoon
Bruce
Findlay
Sullivan
Oakland City
Princeton
Mt. Vernon Jr.
Cynthiana
Grayville Jc.
Carmi
New Harmony
Enfield
Norris City
Benton
W. Frankfort Jc.
W. Frankfort
Johnston City
Pittsburg
Halfway
Marion
Herrin
Elkville
Du Quoin
Pinckneyville
Coulterville
Tamaroa
Sparta
Chester
Orville
Perryville Jc.
Farmington
De Lassen
Saline Jc.
Bismarck
Doe Run Jc.
Doe Run
Turpin
Ste. Genevieve
Potosi
Mineral Pt.
Hoffman
Leadwood
Bonne Terre
Cuba
Sankey
Sligo
Bixby
Salem
Goltra
Nashville
Ashley
Woodlawn
Waltonville
Odin
Centralia
Salem
Kinmundy
Flora
Noble
Olney
Lawrenceville
Bridgeport
Newton
Willow Hill
Edgewood
Vandalia
Mulberry Grove
Altamont
Effingham
Dieterich
Greenup
Yale
Stewardson
Shumway
Windsor
Lerna
Charleston
Mattoon
Bruce
Findlay
Sullivan
Mode
Cowden
Neoga
Casey
Marshall
Farmington
Terre Haute
Brazil
Clinton
Blackhawk
Hymera
Midland City
Worthington
Williston
Bloomfield
Elnora
Washington
Vincennes
Princeton
Oakland City
Mt. Vernon Jr.
Grayville Jc.
Grayville
Cynthiana
Carmi
New Harmony
Enfield
Norris City
Mt. Vernon
Evansville
Newburgh
Rockport
Rockport Jc.
Lincoln City
Huntingburg
Ferdinand
Jasper
Boonville
Tell City
Cannelton
Hawesville
Owensboro
Morganfield
Uniontown
Providence
Madisonville
Hopkinsville
Clarksville
Henderson
Owensboro
Fordsville
Mayfield
Fulton
Hickman
Columbus
Wickliffe
Cairo
Metropolis
Brookport
Paducah
Joppa
Karnak
Mound City
Olmsted
Cairo Jc.
Gale
Tamms
Dongola
Anna
Jonesboro
Cobden
Wolf Lake
Carbondale
Murphysboro
Du Quoin
Pinckneyville
Coulterville
Tamaroa
Sparta
Chester
Orville
Perryville Jc.
Farmington
De Lassen
Saline Jc.
Bismarck
Doe Run Jc.
Doe Run
Turpin
Ste. Genevieve
Potosi
Mineral Pt.
Hoffman
Leadwood
Bonne Terre
Cuba
Sankey
Sligo
Bixby
Salem
Goltra
Nashville
Ashley
Woodlawn
Waltonville
Odin
Centralia
Salem
Kinmundy
Flora
Noble
Olney
Lawrenceville
Bridgeport
Newton
Willow Hill
Edgewood
Vandalia
Mulberry Grove
Altamont
Effingham
Dieterich
Greenup
Yale
Stewardson
Shumway
Windsor
Lerna
Charleston
Mattoon
Bruce
Findlay
Sullivan
Mode
Cowden
Neoga
Casey
Marshall
Farmington
Terre Haute
Brazil
Clinton
Blackhawk
Hymera
Midland City
Worthington
Williston
Bloomfield
Elnora
Washington
Vincennes
Princeton
Oakland City
Mt. Vernon Jr.
Grayville Jc.
Grayville
Cynthiana
Carmi
New Harmony
Enfield
Norris City
Mt. Vernon
Evansville
Newburgh
Rockport
Rockport Jc.
Lincoln City
Huntingburg
Ferdinand
Jasper
Boonville
Tell City
Cannelton
Hawesville
Owensboro
Morganfield
Uniontown
Providence
Madisonville
Hopkinsville
Clarksville
Henderson
Owensboro
Fordsville
Mayfield
Fulton
Hickman
Columbus
Wickliffe
Cairo
Metropolis
Brookport
Paducah
Joppa
Karnak
Mound City
Olmsted
Cairo Jc.
Gale
Tamms
Dongola
Anna
Jonesboro
Cobden
Wolf Lake
Carbondale
Murphysboro
Du Quoin
Pinckneyville
Coulterville
Tamaroa
Sparta
Chester
Orville
Perryville Jc.
Farmington
De Lassen
Saline Jc.
Bismarck
Doe Run Jc.
Doe Run
Turpin
Ste. Genevieve
Potosi
Mineral Pt.
Hoffman
Leadwood
Bonne Terre
Cuba
Sankey
Sligo
Bixby
Salem
Goltra
Nashville
Ashley
Woodlawn
Waltonville
Odin
Centralia
Salem
Kinmundy
Flora
Noble
Olney
Lawrenceville
Bridgeport
Newton
Willow Hill
Edgewood
Vandalia
Mulberry Grove
Altamont
Effingham
Dieterich
Greenup
Yale
Stewardson
Shumway
Windsor
Lerna
Charleston
Mattoon
Bruce
Findlay
Sullivan
Mode
Cowden
Neoga
Casey
Marshall
Farmington
Terre Haute
Brazil
Clinton
Blackhawk
Hymera
Midland City
Worthington
Williston
Bloomfield
Elnora
Washington
Vincennes
Princeton
Oakland City
Mt. Vernon Jr.
Grayville Jc.
Grayville
Cynthiana
Carmi
New Harmony
Enfield
Norris City
Mt. Vernon
Evansville
Newburgh
Rockport
Rockport Jc.
Lincoln City
Huntingburg
Ferdinand
Jasper
Boonville
Tell City
Cannelton
Hawesville
Owensboro
Morganfield
Uniontown
Providence
Madisonville
Hopkinsville
Clarksville
Henderson
Owensboro
Fordsville
Mayfield
Fulton
Hickman
Columbus
Wickliffe
Cairo
Metropolis
Brookport
Paducah
Joppa
Karnak
Mound City
Olmsted
Cairo Jc.
Gale
Tamms
Dongola
Anna
Jonesboro
Cobden
Wolf Lake
Carbondale
Murphysboro

Since the judgment entered by two judges in this case was void and without statutory authority, we have no alternative but to vacate the judgment and dismiss the appeal. Appellants will be free, of course, to suggest that the District Court be reconvened in accordance with the Act so that three judges may hear and determine the application to enjoin the Commission order in issue.

So ordered.

MR. JUSTICE RUTLEDGE dissents.